S. HRG. 101-221

CHILDREN'S TV ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 707 and S. 1215

TO REQUIRE THE FEDERAL COMMUNICATIONS COMMISSION TO REINSTATE RESTRICTIONS ON ADVERTISING DURING CHILDREN'S TELEVISION, TO ENFORCE THE OBLIGHATION OF BROADCSTERS TO MEET THE EDUCATIONAL AND INFORMATIONAL NEEDS OF THE CHILD AUDIENCE, AND FOR OTHER PURPOSES

JULY 12, 1989

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CHILDREN'S TELEVISION ACT OF 1989

WEDNESDAY, JULY 12, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, DC.

The subcommittee met at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Toni Cook, staff counsel; and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. The purpose of this morning's hearing is to consider S. 707, the Children's Television Act of 1989 introduced by Senators Metzenbaum and Lautenberg, and S. 1215, the Children's TV Education Act of 1989, introduced by Senator Wirth with Senators Metzenbaum and Lautenberg as cosponsors.

For the past 25 years federal policymakers have discussed the obligations of broadcasters to program for children. As far back as 1970 the FCC decided to include children in one of the groups whose programming needs had to be met by television broadcasters.

Over a decade later in 1974 the FCC issued the children's television report and policy statement which concluded that broadcasters have a special obligation to serve children as a "substantial and important community group and that children's programming should be aired throughout the weekly schedule."

The FCC also stated that the industry should more clearly separate programs and any commercial messages and that certain practices such as host selling and product tie-ins should be eliminated.

Finally, the FCC endorsed the industry's voluntary commercial time limits, no more than 12 minutes per hour during the week and nine and a half minutes on weekends.

Five years later the FCC through a children's TV task force reviewed this largely voluntary policy and found that while the commercial time limits were generally being obeyed, the programming guidelines were not. The task force found that the amount of children's programming had increased by less than one hour per week since the guidelines were instituted.

As a result, it recommended a series of options to be considered ranging from simply relying on noncommercial TV for children's programming to adopting mandatory requirements.

The FCC received comments on the task force's proposals and in 1985 issued a report, Television Programming for Children. The thrust of this report was to adhere to the general voluntary obligations in the 1974 report. It concluded that broadcasters should not have any specific programming requirements or be subject to any advertising restrictions.

The commission believed that the interests of the children could be best protected by having the marketplace work with virtually no interference by the government.

The 1984 report was appealed and in 1987 the Court of Appeals ruled that the FCC had not sufficiently justified its repeal of the advertising guidelines for children's programming and ordered the FCC to review its decision. The court then required the FCC to reconsider its action.

So far, no commission action has been taken. It was because of the commission's reluctance to act to enhance children's television that the Congress last year passed H.R. 3966 which was identical to S. 707. Because that legislation was pocket vetoed, the Congress is again considering legislation to impose children's programming requirements on television broadcasters.

Both bills, S. 707 and 1215 impose limits on the amount of time that can be devoted to commercials during a children's TV program and requires the FCC to consider at renewal time whether the licensee has met the educational and informational needs of children in its programming.

In both instances, the requirements of in S. 1215 are more stringent. S. 1215 in addition restricts program length commercials and requires television stations to give public notice of its informational and educational children's programming.

Both bills are efforts to address an important issue that has been neglected by the FCC. Our children are this nation's most valuable resource, and we need to pay special attention to their needs.

Clearly we cannot rely on the market force alone to address the needs of children. The question is what are the appropriate steps to be taken, and we are honored this morning to have the author of S. 1215, Senator Timothy Wirth, to lead off the hearing.

As we all know in the United States Senate, Senator Wirth is Mr. Media in the Congress of the United States, not only in the Senate, but in the House of Representatives, and so obviously his statement and his bill will be not only considered seriously, but as Chair I hope to have it moved out by this subcommittee and reported to the floor in a timely fashion so that we can consider this hopefully before recess time.

And following Senator Wirth, we will have a panel including Mr. DeWitt F. Helm, Jr., President, Association of National Advertisers, Dr. Dale Kunkel, Assistant Professor, Department of Telecommunications of Indiana University, Mrs. Peggy Charren, President, Action for Children's TV, Mr. Edward O. Fritts, President, NAB, Dr. Sharon Robinson, Director, Instruction and Professional Development, National Education Association, and Dr. Frank Palumbo, American Academy of Pediatrics.

I would like to thank all of the witnesses for taking time to testify this morning, and now I look forward to hearing from Senator

Wirth, but before we do, may I call upon my friend from Alaska, Senator Stevens. Do you have anything to say?

Senator STEVENS. I have no opening statement.

Senator INOUYE. Now we have a man who is on TV all the time, Senator Gore.

OPENING STATEMENT BY SENATOR GORE

Senator GORE. Mr. Chairman, thank you so much for calling me. I will be very brief. But I do want to add to your comments my own commendation to Senator Wirth.

I had the privilege of serving with Senator Wirth in the House of Representatives and as a member of his Communications Subcommittee in the House of Representatives. And, as you know very well and as Senator Stevens knows very well, Senator Wirth has had a very long standing interest in the quality of children's programming and has been the leader in the House and Senate on solutions for this extremely important problem.

We tend to underestimate how important it is. But, just if you were creating a hypothetical world and you wanted to cause problems in a society, you might come up with the idea of putting a little box in every home and sitting every child in front of it and showing them 20,000 murders by the time they graduated from high school and spending a lot of time and money trying to get them to buy things all the time.

We are strip mining our children's minds and doing it for a commercial profit without any concern for the longer term consequences for them and for our society. It is really a scandal of the first order of magnitude, and American parents know this. They know it, they are mad about it, they would like to see something done. They do not know exactly how to address the problem because we always have to proceed carefully where the content of communications is concerned.

Well, Senator Wirth has really been an innovator in pointing the way to solutions that respect the First Amendment and yet at the same time really get at the heart of this problem.

I also want to commend two of our colleagues who are not here but who have done great work in this area, Senator Howard Metzenbaum, who has provided a statement, and Senator Paul Simon, whose proposals have not been squarely within the jurisdiction of this committee—he has taken a slightly different approach to some of the same issues and has done outstanding work.

So, I look forward to Senator Wirth's testimony and one other person I would like single out, Mr. Chairman, is Peggy Charren. There are a lot of good witnesses today, but Peggy Charren has devoted a lifetime to these issues, and Tim Wirth and I have a markup going on in the Armed Services Committee, and so we may not be able to be here for the whole hearing. I will speak for myself on that, I cannot. But it is an extremely important issue, and I look forward to the hearing. Thank you, Mr. Chairman.

Senator INOUYE. Thank you. I just heard a phrase which I am certain will become the battle cry of most of us here, stop the strip mining of our children's minds. That is a good phrase. I am going to make bumper stickers.

Senator GORE. I think it accurately describes what the situation is, Mr. Chairman. I really do. Strip mining is a short-term activity that leaves long-term scars. Using children as a source of short-term profit without any regard to what the long-term consequences are, it really is the same kind of activity.

Senator INOUYE. I have opening statements from the chairman of the committee, Senator Hollings and Senator Pressler.

[The statements and bills follow:]

STATEMENT BY THE CHAIRMAN

I am pleased that we are once again considering legislation designed to ensure that television programming aimed at our children is responsive to the needs and interest of the children in this country, specifically by limiting the amount of time that can be devoted to commercials during children's programming and promoting quality programming directed at the educational needs of our children. In view of the educational crisis this country faces today, we must do all we can to enhance and increase the educational material to which our children are exposed.

American children spend more time watching television than any other activity, other than sleep. Furthermore, it is well documented that children under certain ages, unlike adults, are not capable of distinguishing programs from commercials. Thus, television has the ability to significantly influence our children's development. Moreover, it is clear that market forces alone have not worked to improve the quality or quantity of meritorious children's programming available on commercial television. The FCC has had ample opportunity to address these concerns, but has failed to act. Consequently, the responsibility has fallen on Congress.

The legislation before us begins to address these concerns. Our responsibility today is to determine how far we need to go to protect our children and enhance their educational opportunities.

OPENING STATEMENT BY SENATOR PRESSLER

Mr. Chairman, thank you for holding this hearing on children's television. Your interest in ensuring the availability of quality television programming for children is well known. I am proud to be an original cosponsor of S. 797, the National Endowment for Children's Educational Television Act of 1989, which you introduced in April.

The legislation we are considering today addresses another serious concern—the amount and type of advertising to be allowed during children's television programs. We had what I thought was a good consensus bill last year and I hope we can come up with something similarly acceptable this year.

Children's programming fits into a special category of television programming. This programming is regularly watched by individuals in the formative stages of their lives. As such, it has a much greater impact on the viewing audience than any other programming on television.

We have an obligation to that particular viewing audience to provide them with quality educational programming. Children should not be subjected to program-length commercials. Ideally they would not be subject to commercials at all, but this is commercial television and some amount of advertising must be allowed.

We have two bills before us that address this issue. I look forward to hearing the testimony of today's witnesses regarding this legislation. Thank you again, Mr. Chairman, for holding this important hearing.

101ST CONGRESS
1ST SESSION

S. 707

To require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5 (legislative day, JANUARY 3), 1989

Mr. METZENBAUM (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Television Act of 1989".

SEC. 2. FINDINGS.

The Congress finds that—

(1) television can assist children in learning important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them;

(2) as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children;

(3) the financial support of advertisers assists in the provision of programming to children;

(4) special safeguards are appropriate to protect children from overcommercialization on television;

(5) television station operators and licensees should follow practices in connection with children's television programming and advertising that take into consideration the characteristics of this child audience; and

(6) it is therefore necessary to require the Commission to take the actions required by this Act.

SEC. 3. RULEMAKING REQUIRED.

(a) RULEMAKING ON COMMERCIAL TIME REQUIRED.—The Federal Communications Commission shall, within 30 days after the date of enactment of this Act, initiate a rulemaking proceeding to prescribe standards applicable to commercial television broadcast licensees with respect to

the time devoted to commercial matter in conjunction with children's television programming.

(b) REQUIREMENTS FOR STANDARDS.—The standards required by subsection (a) shall require commercial television broadcast licensees to limit the duration of advertising in children's programming, on and after January 1, 1990, to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays, except that, after January 1, 1993, the Commission shall have the authority—

(1) to review and evaluate the standards prescribed under this subparagraph; and

(2) after notice and public comment and a demonstration of the need for a modification of such standards, to modify such standards in accordance with the public interest.

(c) TIME FOR COMPLETION OF RULEMAKING.—The Commission shall, within 150 days after the date of enactment of this Act, prescribe final standards in accordance with the requirements of subsection (b).

SEC. 4. CONSIDERATION OF CHILDREN'S TELEVISION SERVICE IN BROADCAST LICENSE RENEWAL.

The Federal Communications Commission shall consider, among the elements in its review of an application for renewal of a television broadcast license—

(1) whether the licensee complied with the standards required to be prescribed under section 3 of this Act; and

(2) whether the licensee has served the educational and informational needs of children in its overall programming.

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II

101ST CONGRESS
1ST SESSION

S. 1215

To require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 21 (legislative day, JANUARY 3), 1989

Mr. WIRTH (for himself, Mr. METZENBAUM, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Children's Television Education Act of 1989".

FINDINGS

SEC. 2. The Congress finds that—

(1) there are serious shortcomings in our Nation's educational system, which have been documented by a number of expert commissions, and which will profoundly affect both the opportunities available to our Nation's children, and the ability of the United States to compete effectively in an international economy;

(2) by the time the average student graduates from high school, that child has spent more time watching television than in the classroom;

(3) it has been clearly demonstrated that television can assist children in learning important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them;

(4) the potential of commercial television programming for making a major positive impact in improving the education of children has been largely unrealized;

(5) as public trustees, commercial television broadcasters have a legal obligation to serve children, regardless of the contribution that may be made by public television, cable television, video cassettes, or other new or traditional communications media;

(6) commercial television has generally failed to meet its obligation to provide educational and informa-

tional programming to children as part of its requirement to serve the public interest; and

(7) the Federal Communications Commission has declined to take effective steps to increase educational and informational programming designed for children on commercial television and has instead rendered broadcasters' obligations to serve children vague and unenforceable.

LIMITATION OF COMMERCIAL MATTER AND REQUIREMENT OF PUBLIC NOTICE

SEC. 3. (a)(1) Subject to any modification adopted by the Federal Communications Commission under subsection (c), a broadcast television licensee shall limit the duration of commercial matter in children's television programming, on and after January 1, 1990, to not more than 9.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

(2) On and after January 1, 1990, a broadcast television licensee shall provide public notice to assist interested individuals in identifying programs specifically designed to serve the educational and informational needs of children.

(b)(1) The Commission shall, within 180 days after the date of enactment into law of this Act, adopt rules to enforce the requirements of subsection (a).

(2) The rules adopted under this subsection shall require, among other things, a broadcast television licensee to

publicly identify programs specifically designed to serve the educational and informational needs of both preschool and school-aged children. The public notice shall be provided in advance of the date a program is broadcast and also immediately prior to the beginning of each such program to assist parents and others who supervise children in identifying programs of educational or informational value for children.

(c) After January 1, 1993, the Commission shall have the authority to (1) review and evaluate the requirements prescribed in subsection (a), and (2) after notice and public comment and a demonstration of the need for a modification of such requirements, modify such requirements in accordance with the public interest.

(d) For the purposes of this Act, the term "commercial matter" means all matter broadcast by a broadcast television licensee for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by the station so broadcasting, from any person, regardless of whether such matter is entirely commercial in content.

(e) In any complaint brought to enforce this section, where the broadcast matter was obtained by a broadcast television licensee through a barter arrangement, the licensee shall have the burden of demonstrating that the terms of such

barter arrangement provide fair compensation to the supplier of the broadcast matter.

CONSIDERATION OF CHILDREN'S TELEVISION SERVICE IN BROADCAST LICENSE RENEWAL

SEC. 4. The Federal Communications Commission shall consider, among the elements in its review of an application for renewal of a television broadcast license—

(1) whether the licensee complied with the requirements prescribed under section 3 of this Act; and

(2) whether the licensee has provided programming specifically designed to serve the educational and informational needs of both preschool and school-aged children.

○

Senator INOUYE. Mr. Wirth.

STATEMENT OF HON. TIMOTHY E. WIRTH, U.S. SENATOR FROM COLORADO

Senator WIRTH. Mr. Chairman, thank you very much. I want to thank you and the members of this committee for your longstanding commitment to the value of education and the value of children in our society.

I also want to thank Senator Gore for his strong support over the years and his commitment to children's television. Many of us have been in this battle for a long time. Sometimes you have the feeling you are getting worn down by the mad rush to deregulate or the rush to the bottom. But we have to stand up to this, Mr. Chairman, and continue our commitment to the future of this country and children's television.

With me is Michael Perko who was on my staff when I chaired the Telecommunications Subcommittee in the House and very ably assists me in the Senate.

As you pointed out, there are two pieces of legislation in front of us, Mr. Chairman, the legislation passed last year, the House bill, and the stronger proposal which I have introduced with Senator Metzenbaum and Senator Lautenberg and Senator Moynihan, S. 1215.

I would like, if I might, Mr. Chairman, to submit a full statement for the record and to have included with that a side-by-side comparison of the two pieces of legislation.

Senator INOUYE. Without objection, so ordered.

Senator WIRTH. Thank you very much, Mr. Chairman. We are in a time of a severe and very, very significant education crisis in the United States of America. A study conducted by the Education Department pointed out that we have a nation at risk. That was one of any number of studies concluding that we in the United States are not doing very well in terms of assuring that every child in our society has an equal opportunity. That is the dream, equal educational opportunity and that is what this democracy is built upon.

I would submit to you, Mr. Chairman, that unless we, as a country, realize that dream, unless we as a Congress recommit ourselves to the realization of that dream, we are going to have a society that is increasingly ungovernable in which the gap between rich and poor, the gap between those with opportunities and those without opportunities grows greater and greater.

Traditionally, Mr. Chairman, there have been three forces in our nation's history that help to bridge the gap. One is clearly family, the second is church, and the third is schools. Those have been traditionally the three major forces assuring that young people had an opportunity in our society.

As we all know, there is now a fourth that is growing increasingly important, and that is the power of television. Young people spend more time in front of a television set than they do in a classroom. The power of television is very, very great.

And yet the irony—or what I call the a paradox—is that the more we understand television and the more we understand the impact and the power of television, the less we use it. What an absurd situation—to have this extraordinarily powerful tool for making sure that young people are able to participate, learn about our society, learn the skills for manipulating ideas and numbers to participate in this very complicated society, becoming more complicated by the 21st century, and not use it.

We know the power of television. The paradox is the more we learn about the power of television, the less we are using it, and this is the thrust of my legislation, S. 1215.

The legislation which I have introduced, Mr. Chairman, has four fundamental elements. Let me briefly outline each one of those.

First, it requires each broadcast station to provide programming, "specifically designed to serve the educational and information needs of preschool and school age children." This is more than the other legislative proposals require. In the other legislation broadcasters would be required to serve the educational and informational needs of children through their overall programming. This I think, is very weak, and not targeted. That is a very important difference between what I have offered and what is in the House bill.

What we have to do, Mr. Chairman, is very specifically focus on the educational needs of young people. Today, there is not one regularly scheduled weekday educational program offered by one of the major commercial television networks. There used to be, and we all know in the early days of television, in the fifties, sixties and early seventies, there were a variety of uneducational program

running from Captain Kangaroo to a variety of other programs which were designed to focus on the educational needs of young people.

I believe, this is an appalling situation, Mr. Chairman. An appalling commentary on how the commercial television has failed to meet the educational needs of our young people.

It is ironic, I think, Mr. Chairman, that on the one hand television can do such good work in the area of news programming, for example, and yet at the other end of the spectrum is absolutely delinquent.

A second element of S. 1215 requires—and this is a new idea—advance public notice by broadcasters of the educational programming provided for children. In the program that you receive in your newspaper every day, for example, you could get in there would be a note that says, "This is programming that is appropriate for young people."

Now, why is that? What we ought to be doing, Mr. Chairman, in a time when both parents are working in a family, when there is increasingly single-parent families, is giving those families assistance to point out to their kids appropriate programming.

You know as well as I do that there are an awful lot of working parents in this country. They do not have time in 1989 to sit through and watch every one of these television programs and say this is good, this is not good, this is the kind of thing that my kids ought to be watching. They simply do not have time to do that, given the economics and the family structure of America in 1989.

We ought to require that broadcasters do at least that much to identify which programs are appropriate, so parents looking at the TV guide can help their kids work their way through the programming that is out there.

A third item in my legislation, Mr. Chairman, establishes advertising limits of 9.5 minutes per hour on weekends and 12 minutes per hour on weekdays. These are precisely the standards that were set up by the FCC and worked from 1974 to 1984. Those were the standards for a decade. There is no good reason to deregulate any further. There is no good reason to go beyond those figures. There is no reason for us to write into law anything any higher than that. All we would do by writing in something higher is to say that that is the number we approve of. Let's not do that. Let us stick with the standard that worked very well from 1974 to 1984. Nobody raised a single suggestion that they did not work well.

Fourth, and you mentioned this, is to restrict program length commercial by subjecting the programs to the advertising limits. As you pointed out in your opening statement, program-length commercials are effectively half hour programs that tie-in the marketing of toys to kids. Now, we would not tolerate that for adults, would we? Absolutely not. And yet for kids we have half hour-long programs, hour-long programs that are simply there for the purposes of hawking and peddling goods to little kids.

It does seem to me that we can suggest to the broadcasters that they can do better than this. It is a shameful practice. Program-length commercials and program tie-in, are a shameful practice, and we ought to bring that to an end.

Those are the four primary provisions of this legislation, Mr. Chairman. In closing I would like to make two comments. First, related to must-carry. I have watched the very recent developments on must-carry with great interest, and this subcommittee is deeply involved in that. I must say, Mr. Chairman, I find it somewhat ironic that the broadcast industry is maneuvering so vigorously to find a legislative fix for must-carry while at the same time the industry continues to strongly resist the very public interest responsibilities which they are using to justify new must-carry rules. They cannot have it both ways.

Please do not misunderstand. It is not that I am opposed to a reasonable must-carry regime. There should be one. Indeed, broadcasters are special and deserve special consideration, but they also have special responsibilities.

Let us not lose sight of why we provide special protections to commercial broadcasters. This special treatment springs directly from the public interest obligations broadcasters are licensed to serve. Under the Communications Act of 1934, Mr. Chairman, broadcasters receive that license for free from the public. They receive that license in return for broadcasting "in the public interest."

That public interest has always been defined to include children's television and the interests of young people until the mad rush to deregulate in the 1980s.

Broadcasters must earn this special treatment by meeting their public interest responsibilities. We should take steps to ensure that the public interest is served, and we should start with children's programming.

That is one of the keys to opposition of this legislation, Mr. Chairman. The broadcasters will say that we have no right to do that. We do not impose that requirement on newspapers. Why should we impose some kind of a requirement on television?

The reason that we do that is that broadcasters receive this license, a monopoly license from the public in return for agreeing to broadcast in the public interest. What in the public interest is involved with program tie-ins? What in the public interest is involved with program length commercials? What in the public interest is involved with virtually no—no—educational programming specifically for children?

The public interest I believe, Mr. Chairman, requires broadcasters to do this.

The second point of opposition, and I will close with this, is that broadcasters will claim why should they do this, there is a whole diversity of programming in the marketplace. There is a diversity of programming they will claim with public television, cable and there is a diversity of programming with VCRs.

I would submit that the power of commercial television remains. It is the overwhelming programming that people watch.

And, second, to say that there is this diversity of programming for cable and VCR, suggests that everybody is on the same economic footing. We all know that there are people who are more affluent than others in this society. The requirement for educational programming on television is particularly important for kids who are going to schools where they have fewer opportunities. Those

are the very kids who are less likely to have cable television, less likely to have VCRs, less likely to have the tapes to show on VCRs. So, it is a vicious cycle that the television people will suggest in terms of opposing this bill.

Mr. Chairman, this is a major responsibility that we have as the United States Congress to look out for the interests of young people in this society. The broadcasters are not doing so. We gave them the opportunity through the forces of deregulation, and we found out that they were reluctant to meet—failed to meet—their public interest responsibilities. It is time that we face up to those responsibilities and make sure that once again we assure requirements and childrens programming are part of commercial television again.

I thank you for your patience, Mr. Chairman, and for your long commitment to children's television issues. I look forward to working with you in passing this strong legislation. Thank you, Mr. Chairman.

Senator INOUYE. Thank you very much, Senator Wirth. I wish to assure that, as chair of this committee, and I believe I speak for most of the members, if not all of them, we consider this type of legislation to be the most important that will be considered by this subcommittee.

Senator WIRTH. Thank you, Mr. Chairman.

Senator INOUYE. Do you have to leave now?

Senator WIRTH. Senator Metzenbaum and I have been involved in these wars for a long time and, if I might, I would like to sit and listen to what Senator Metzenbaum has to say.

[The statement follows:]

Statement

of

Senator Timothy E. Wirth

before the

Subcommittee on Communications

Children's Television Legislation

July 12, 1989

Introduction

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear this morning to discuss the current state of children's television and pending legislation. As many of you know, since I was first elected to the House of Representatives in 1974, and as chairman of the House telecommunications Subcommittee for 6 years, I have worked to bring about improvements in the quality of children's television programming. Children's television is an important issue that deserves the careful attention of Congress.

I commend the subcommittee for its work in the area of children's television. I know many members of the subcommittee share my concern about the current state of

children's television programming. The strong support Senator Inouye's endowment proposal received from this subcommittee is testimony to its strong commitment to improve children's television.

Education Crisis

Mr. Chairman, we all know there is an education crisis in this country. A crisis that is eating away at the fabric of our society and undermining our economic competitiveness. As a very prominent report conducted by the U.S. Department of Education put it: "we are a nation at risk."

We see it every day, day in and day out. Twenty-five percent of high school students from low-income families drop out; our inner city schools are increasingly becoming battlegrounds; Head Start does work, but only one in six eligible children are funded; and there are more than thirty million illiterate adults in this country.

How can we begin to address this crisis?

The Potential of Television

In recent years a new force has joined family, church and school, the traditional institutions through which we imparted values and knowledge to our young. Television has

become a force as powerful as the others -- perhaps even more powerful. Study after study shows us the enormous potential of television in educating and socializing our children. Yet the tragic paradox is that the more we know about television and its capacity to teach our young, the less we use it.

It puzzles me how most television stations can perform so admirably in some areas, such as providing world-wide news coverage and at the same time perform so poorly in delivering worthwhile educational programs for children. With the deregulation frenzy at the FCC in recent years, broadcasters seem to have abandoned educational children's programs altogether. Today, not one of the three major commercial broadcast networks offers a single regularly-scheduled weekday educational program for children. There is no question about it, the educational needs of America's children are not being served by the nation's television broadcasters.

I know we are capable of doing better. The question is, will we?

The Children's Television Education Act of 1989 (S. 1215)

Last month, along with Senators Metzenbaum and Lautenberg, I introduced "The Children's Television Education Act of 1989" (S. 1215). This legislation, if enacted, would help remedy

this troubling situation by, among other things, requiring each station, as part of its public-interest obligation, to provide programming specifically designed to educate and inform young viewers.

I should note at the outset that this legislation is significantly different from legislation that I have sponsored in past Congresses. S. 1215 does not require broadcasters to provide an hour each day of children's educational programming Monday through Friday. While I continue to believe that such a requirement would be beneficial, I am also pragmatic and recognize that this approach has created controversy in the past.

Educational Programming Specifically Designed for Children

A very important aspect of S. 1215, however, is its emphasis on programming specifically designed for the child audience. This is what the public interest requires and what the broadcast industry has consistently failed to deliver.

Why is this requirement so crucial?

Extensive research tells us children learn most effectively from material that is specially tailored to their limited level of cognitive development. Imagine a third-grader trying to learn from a textbook intended for college students

and it is easy to see why we need educational television programs specifically designed for children.

If our goal is to provide programming that will educate and inform the child-viewer -- and I believe that this is a goal we all share -- it is essential that the unique characteristics of the child be taken into account during the planning and production of this programming. This is the central element of my legislation.

Legislation introduced and pending in the House, on the other hand, contains no such requirement. Rather, this legislation stipulates that each broadcaster serve the educational needs of children through their "overall programming". Indeed, it would appear that the House legislation could be met without a single educational program designed for children.

Many family-oriented programs could certainly be argued to provide lessons of benefit for children. For example, a station could present a "National Geographic" nature documentary and make an unassailable claim that the program fulfilled its commitment under the House proposal. These programs certainly may have some value for children, but they do not accomplish the goal of providing what we currently lack and need to promote -- educational programs specially tailored for children.

Public Notice

My proposal would also require that educational programs for children be publicly identified in advance by the broadcaster. Any program that a station designates as educational would be coded with a symbol such as those used for movie ratings. This would provide valuable information for parents and others who wish to guide children's television viewing, but lack the time to survey all the available programs and evaluate their relative merits. The broadcaster would be the sole judge for applying this designation, but the strength of a station's educational offerings would, of course, be subject to review during the license renewal process.

Advertising Limits

Finally, as part of a comprehensive package to improve children's television, my legislation would limit commercial advertising during children's programming to no more than 9.5 minutes per hour on weekends and 12 minutes per hour on weekdays. Children deserve special protection from television advertising because they lack the maturity and sophistication to effectively defend against commercial appeals.

The advertising limits I propose are identical to those maintained by the FCC from 1974 until 1984. The agency abandoned its policy in 1984, arguing that the marketplace would limit children's advertising as effectively as government restrictions. The Commission reasoned that when viewers are subjected to an excessive amount of commercials, they will become annoyed and turn the channel, thus creating an incentive for broadcasters to limit commercials. This sounds good, if you say it fast enough. But this logic can hardly be applied to young children who are not yet capable of recognizing the difference between a television program and a commercial. The flaws in the Commission's logic are obvious.

If the FCC acted in a responsible fashion, it would have already reinstated its children's advertising restrictions and there would be no need for legislative action in this specific area. In June, 1987, the U.S. Court of Appeals ruled that the Commission had erred in deregulating this policy and ordered the agency to reconsider the decision. Now, more than two years later, the FCC continues to stonewall and has offered no response to the court order.

In the meantime, America's children continue to be subjected to increasing amounts of commercial pitches. A number of surveys demonstrate that broadcasters have increased the

amount of advertising time during children's programs, in many cases exceeding the 9.5 and 12 minute limits.

The legislation in the House would accommodate this increase in advertising time during children's programs by allowing stations an additional minute per hour on weekends above and beyond the previous limits.

Stations should never have been allowed to exceed the originial limits, and I see no good reason to accommodate the increased amount of commercials in any new policy. Broadcasters have presented no compelling evidence that such commercialization is either necessary or appropriate. The 9.5 minute limit proved workable for more than a decade, and I continue to believe that it is the most desirable benchmark for protecting children from excessive commercial persuasion.

Program-Length Commercial (PLC) Restriction

Another important distinction between the House bill and my legislation is how each treats product-related programming. so-called program-length commercials (PLCs). My proposal would restore a policy of restricting PLCs, a public interest protection the FCC maintained until 1984. In contrast, the House legislation would allow the FCC's recent deregulation of children's program-length commercials to stand.

The FCC abandoned its restriction on PLCs at the same time it lifted its limits on the amount of children's advertising. Not surprisingly, the Commission offered not a single word to justify its decision permitting such crass commercialism. In fact, I have yet to hear anyone, either from the FCC, the broadcast industry, or the advertising industry, explain to me how the public interest is served by allowing television programs to be used to promote products to children.

Entertaining or not, these programs designed to pitch toy products to children are really nothing more than 30 minute commercials. Commericals masquerading as programs would never be tolerated by adults, but these shows are popular with children only because youngsters cannot yet recognize the commercial aspect of the program. Rather than serving the public interest by delivering messages of value to child-viewers, such programs are principally designed to manipulate a child's desires for others' economic gain.

America's childen deserve better from a medium designated to serve the public interest. Serving the public interest means providing children's programs that are designed to enrich a young viewer's mind rather than a toy manufacturer's profit margin.

Mr. Chairman, my proposal would put an end to program-length commercials by categorizing such content as advertising --

which indeed it is -- and then subjecting it to the relevant limits for children's programs. Because the programs would clearly exceed either the 9.5 minute or 12 minute limit on advertising, they would be effectively removed from the airwaves.

Support of Legislation

Mr. Chairman, I am very pleased to say that my legislation has earned the strong support of several organizations, including, the American Academy of Pediatrics, the American Psychological Association, the Consumer Federation of America, the National Education Association, the American Academy of Child and Adolescent Psychiatry, the National Parents and Teachers Association and the National Association of Better Broadcasting. The subcommittee will be hearing from representatives of some of these organizations later this morning.

The legislation has also been endorsed by a group of leading scholars who conduct research on children and television issues.

Conclusion

Mr. Chairman, as I have tried to point out this morning, there are a number of very important differences between my children's television legislation and other proposals, particularly the legislation now pending in the House. These differences are more than cosmetic -- they represent the difference between doing something meaningful and doing virtually nothing to improve the status quo.

I think we all know what is needed to effectuate meaningful change in children's television. What is not at all clear, however, is if we -- the Congress -- will act to adopt legislation that will transform children's television from a "vast wasteland" to a source of intellectual stimulation and enrichment for America's children.

Mr. Chairman, this is an important issue that deserves our attention and action. It is time we return to a responsible and common sense approach to the regulation of children's television. An approach that will make better use of television as an educational tool and teacher for our nation's young people. I believe my proposal would accomplish this.

I urge the members of the subcommittee to carefully examine the very important differences between the various children's television proposals. I am convinced that after careful consideration of these proposals, the Subcommittee will recognize S. 1215 as the most effective remedy to this longstanding problem.

Thank you.

CHILDREN'S TELEVISION LEGISLATIVE PROPOSALS

S. 1215 and H.R. 1677

ISSUE 1: Children's Programming Requirement

Background

In our system of commercial broadcasting, where profits rely on audience size and buying power, children can never "compete" in the open marketplace. Children are relatively few in number and short on purchasing power. Thus, the needs of children are consistently overlooked in favor of more profitable programming. The public interest requires that commercial television serve the needs of children.

Current FCC policy, implemented in 1984, states that children's needs can be served by the "broad marketplace," including cable, public TV, and VCRs. As a result, each station no longer has an obligation to serve children. Since 1984 deregulation, the amount of children's programming has declined; today, there is almost no educational/informational programming for children on any of the commercial stations.

How does pending legislation address this critical issue?

House (H.R. 1677)..... Requires each station to serve the educational and informational needs of children through their "overall programming." This would allow stations to claim that family-oriented shows or nature programs fulfill this obligation. It would not necessarily result in new educational programs for children.

Senate (S. 1215)..... Requires each station to provide programming "specifically designed to serve the educational and informational needs of preschool and school-aged children." This would assure that required programs are comprehensible to young children who often have limited understanding of adult-oriented content. Children learn most effectively when content is tailored to their level of understanding. The requirement in S. 1215 is designed to achieve this result.

ISSUE 2: Children's Advertising Limits

Background

Advertising limits were first established by the FCC in 1974 as a result of research indicating young children cannot distinguish programs from ads nor recognize ads' persuasive intent. Because of limited cognitive development, children are uniquely vulnerable to commercial persuasion and are not considered "fair partners" in an advertiser/consumer relationship.

The FCC maintained limits of 9.5 minutes per hour on weekends and 12 minutes per hour on weekdays from 1974-84. The FCC abandoned these limits using faulty logic in a decision that was remanded by the U.S. Court of Appeals (1987) for reconsideration. Two years later, the FCC has failed to respond to the court remand order, and children's ad limits remain suspended.

House (H.R. 1677)..... Limits ad time during children's programs to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. Only standard product ads are subject to these limits. The bill offers no rationale for establishing these specific limits.

Senate (S. 1215)..... Sets limits at 9.5 minutes per hour on weekends and 12 minutes on weekdays. This is the same level that the FCC established in 1974 -- a level that the industry lived with without complaint for 10 years. The legislation also uses the definition of ads derived from Section 317 of the Communications Act.

ISSUE 3: Program-Length Commercials (PLCs)

Background

The FCC prohibited program-length commercials from 1974 to 1984. The agency defined PLCs as program content that had the primary purpose of promoting products to children, even if it was still entertaining and otherwise acceptable content for kids. The PLC restriction was abandoned in 1984 without a single word of justification or explanation. The proceeding pending at the FCC on children's ads (court remand) does not specifically require the agency to reconsider PLC deregulation, only the minute per hour limits. Thus, one cannot assume the agency will address the issue of PLCs.

House (H.R. 1677).....	Does not address PLCs
Senate (S. 1215).....	Would effectively restrict all PLCs that fit the definition of commercial matter under Section 317 of the Communications Act. In a 1987 court ruling (FCC v. NABB), "He-Man" was held to fall under Section 317 and, therefore, considered commercial matter. Section 317 requires that such content be "clearly identifiable" so the viewer is not deceived about the persuasive intent of the message. S. 1215 applies the minutes per hour limit to all 317-type broadcasts, thereby making PLCs impractical.

ISSUE 4: Public Notice

Background

Broadcasters traditionally have been required to provide programs to serve the public interest, often within certain categories (i.e. children, news/public affairs, etc.). As a result, program efforts are carefully planned by broadcasters and reported to the FCC, but information as to what programs meet obligations is not routinely shared with the public.

If parents knew what programs broadcasters were providing to serve educational needs of children, they could enourage viewing. Parents cannot realistically oversee all of children's viewing, and their task of supervising children would benefit from public notice that would identify valuable content. A similar system is used in Australia, where educational programs for children receive a "C" designation.

House (H.R. 1677)..... Does not address public notice.

Senate (S. 1215)..... Requires advance public notice by broadcasters regarding programs offered to comply with the educational and informational obligation of the legislation. The broadcaster would determine what content receives the educational/informational designation. The information could be listed in TV listings, scheduling, and on program promotions, etc.

Senator INOUYE. Now it is my pleasure to call upon the man who we always looked upon as the conscious of the Senate. Any legislation that he touches must be important.

Senator Metzenbaum.

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Thank you very much, Mr. Chairman. And let me comment about the Chairman. I want to compliment you on the fact that you were able to get a bill out that would authorize a $10 million endowment to support the development of educational programs that are aired on public television. I think that is good legislation and it is the kind of legislation for which you have become known in your many years in the Senate.

And I am pleased to be here to testify in support of legislation to help improve the quality of children's television programming. This is the first time in my legislative career that I can recollect that I have authored a bill and at the same time been a co-sponsor of another senator's bill, which is stronger and goes further than my own legislation.

And I think that if I were to be asked: Well, how come you are on both bills; which one are you really for? I think I would not

have any hesitancy in saying that I think Tim's bill is a better bill than my bill. So, I think his bill represents the hope and the aspiration, and I think my bill probably represents the reality and the pragmatic approach of getting the legislation through.

We know that my bill is the same bill that President Reagan vetoed last year.

Now, if there ever was an area—ever—that cried out for improvement, you just have to turn on your television any afternoon or weekend morning to see what I mean. Children's television programming is such an abomination that it truly is an embarrassment to our nation.

If you flip the channels you will find plenty of mind-numbing cartoons and dozens of slick commercial pitches for candy and sugary cereals and toys. But you will not find one single show about current events, history or geography; none.

Instead of inspiring children to learn, broadcasters are pushing them to buy, buy, buy. And taking the minds of these little children and truly putting them into a mindset. I guess I could almost say that I have a kind of reaction that I cannot take one of my grandchildren, of whom I have six that I love very dearly, out for lunch without their insisting that I go to McDonald's and get one of those special little boxes that really are filled up with a lot of air, and not a whole lot else.

Senator MCCAIN. I think it is called a Happy Meal.

Senator METZENBAUM. Happy Meal. Well, it is a Happy Meal for the kids, I guess, and unhappy for the grandfather.

Action for Children's Television did a study of ads running during children's traditional viewing hours. And during one afternoon last November, ACT found that commercials gobbled up 14 out of 60 minutes of air time. Over 30 different toys and sugary cereals were hawked. Kids got the hard sell for everything from the Battleship Game to Cocoa Puffs cereal.

There seems to be no end to this crass commercialism and exploitation of children.

Now I also read an article in the Wall Street Journal last week which really shocked me. It was about ads appearing on children's television shows which persuade and prevail upon the children to call toll telephone services. And, Mr. Chairman, I ask that the ad entitled "Do Toll Phone Services Play Fair by Advertising Directly to Kids," that it be inserted in the record at the conclusion of my remarks.

Senator INOUYE. Without objection, so ordered by reference.

Senator METZENBAUM. Now these particular ads are disturbing because they eliminate the opportunity for parental supervision altogether. They encourage children to pick up the phone and call numbers which feature cartoon characters playing taped messages. No parental involvement is necessary. Toll lines, such as the Slime Line and the Freddy Pumpkin Horror Story Line, are urging kids to call again and again. And the impact on the phone bills is staggering; the impact on their minds is even more devastating.

One man in Massachusetts discovered that his kids had made close to $200 worth of these calls in a three-month period.

Senator INOUYE. May I interrupt at this point? Is this nationwide now?

Senator METZENBAUM. Yes. Yes, according to the Wall Street Journal. That is my source of this information. That is my understanding. Yes.

And these hucksters have no shame. They have no sense of community responsibility. And they are being carried on our television networks and our television stations. Have the broadcasters no sense of responsibility, no shame in airing these obviously unfair advertisements aimed at small children? "Go to the telephone and call this toll number and get this kind of a message." Come on. What kind of responsible men or women can these be?

The broadcasters should stop these ads, not tomorrow, but today. They ought to put a halt to it. They have an obligation to the community. And if they will not do it themselves, Mr. Chairman, and I will look for their response after this hearing today, then I am prepared to offer an amendment to the children's television legislation, which I authored and which I hope this committee will soon be reporting out. I will be prepared to amend my own legislation or ask this committee to draft an amendment that will cover that subject.

Let us stop all this commercial huckstering aimed at children. If the regulators will not act to improve children's television, and the broadcasters will not do it themselves, then we in Congress have to make it happen.

How often do we hear that we ought to let free enterprise operate on its own; that we ought to take the burden of governmental regulation off the business community; let the business community alone and they will do the job right? The broadcasters are not doing the job right. That is the reason we have to have legislation of this kind.

They knew what was in the wind. They knew what we had passed last time. They should have done something about it without our having to come here and enact legislation. That is the reason I am here today speaking in support of both S. 707 and S. 1215. Despite these differences, the bills share a common goal: to minimize the commercial pitch and maximize education in television programs geared for kids.

S. 707, which I introduced with Senator Lautenberg in April, is identical to legislation which is currently moving through the House. This is the version which was pocket-vetoed by President Reagan last year. A President who, I must confess, in vetoing that kind of legislation, must have had a peculiar sense of insensitivity to children and grandchildren. Otherwise, I do not see how he could have vetoed that bill.

S. 707 limits to 12 minutes commercials aired during children's weekday programming. On Saturday and Sunday mornings, the limit would be set at ten-and-a-half minutes. It should be less, but I think it is a pragmatic approach. The bill also requires the FCC to consider, as part of the broadcast license renewal process, a broadcaster's efforts to serve the educational and informational needs of children in its overall programming.

My colleague's bill, Senator Wirth's bill, reduces by another minute the amount of commercial airtime permissible on weekend mornings. It requires the FCC to consider, during a license renewal, whether a broadcaster has provided educational programming

specifically designed for children. And it would eliminate program-length commercials.

Mr. Chairman, the decision is whether or not to take that bill, of which I am a co-sponsor, or my bill. That is a decision this committee will make for itself. But regardless, do not let the differences hang up this committee's progress in moving forward on this legislation. Congress must take action in this area. And I hope the sooner the better.

Our children and our grandchildren deserve it. The stronger the children's television bill we come up with, the better it will be for our children. But let us act now. Let us put a bill on the President's desk. I feel certain that this president will sign the legislation that we send him, although I am in no position to speak with any authority on that subject.

Thank you, Mr. Chairman.

Senator INOUYE. I thank you very much, Senator Metzenbaum.

Senator Stevens.

Senator STEVENS. Senator, I cannot share your insensitivity to President Reagan's enforcement of the First Amendment. What happens to the First Amendment under your approach?

Senator METZENBAUM. I do not think anything happens to the First Amendment under my approach. I mean, to say that—let us face it, these television stations are using time, using the airwaves that we, the American people, give them. And we certainly have a right to limit the amount of time of children's programming—commercials on children's programming.

I do not think there is any question of a First Amendment issue. And I have difficulty in even conjecturing up how there could be a First Amendment issue.

Senator STEVENS. You do not think there is a First Amendment issue in the concept of telling an advertiser how much time he can use on air media?

Senator METZENBAUM. No, I do not believe there is a First Amendment issue. And I would be very happy, I might say, Senator Stevens, to take that issue to the Supreme Court or to any other court and argue that question of the First Amendment.

Certainly, we have a right to regulate the amount of time that can be devoted to a particular subject on the commercial airwaves in connection with a subject such as children's television. I do not think there is any First Amendment issue that I would find in that subject at all.

Senator STEVENS. Well, where do you find a First Amendment issue, then, in broadcasting? I have got to tell you, I do not think it is that clear at all. I think I have been a lawyer as long as you have, and it seems to me that if we can limit the amount of advertising time that you can put onto children's broadcasting, then we could limit the amount of time that you could use to advertise any other product.

Senator METZENBAUM. I think we do. Is there not a limit now with respect to cigarette advertising?

Senator STEVENS. We have imposed, in some instances, as I understand it, an approval of a ban that was worked out by the industry. And as a matter of fact, it seems to me that the real problem is

that if we start down this road, where do we come out? Can we limit the amount of time that you can buy as a candidate?

Senator METZENBAUM. I think you could. I absolutely think you can limit the amount of time that you could buy as a candidate. I think that we have said to the broadcasters that you are supposed to sell us that time at a different rate than they sell it to somebody else.

Senator STEVENS. No, we have said you have got to sell it to us at the lowest rate you sell to someone else for the same amount of time, and the same quality of time. And that is an equality proposition as opposed to interfering with the content of advertisers.

As a father of six children, I share your feeling about television. But I tell you, I had it a lot more back in the days when over-the-air television was the only media they could look at. Today, with VCRs, with cable, with so many other things, I think there is a great deal more parental control than you convey to us. And I think that when we are getting into the business of going down the road of limiting what people can say over the air, because we can control the people who give them access to the air, we are, again, touching on the First Amendment.

And I am going to pursue that a little bit further, but I do not think we should cavalierly dismiss the President's protection of the First Amendment with a pocket veto. That veto could have been taken up for an override.

Senator METZENBAUM. Well, let me make it clear to you, Senator. We limit liquor ads as far as television is concerned. We limit cigarette ads. And there certainly is a major distinction between commercial ads and political ads. Political ads stand in a special category. But when it comes to commercial ads, I do not think we have any difficulty.

And I might point out to you. We are not saying what can or cannot be on the program. We are saying how much time can be available on the program. And I think that is perfectly within the rights that we have. And I would say to you that I have always felt that——

Senator STEVENS. I think your bill goes further than that. Although I must say your bill does not go as far as Senator Wirth's. But we will discuss it more, I am sure, on the floor.

Thank you, Mr. Chairman.

Senator INOUYE. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator Metzenbaum, I am a little confused. Perhaps you can help me out here. Which bill do you support?

Senator METZENBAUM. I support both bills.

Senator MCCAIN. Which bill would you want this committee to report out or would you leave that to the Committee?

Senator METZENBAUM. I would urge this committee to report out the Wirth bill. I think the Wirth bill is stronger. I think it goes further. And I think it does a more effective job. But it is my view that looking at the political picture, and being a realist, that I think it may be far more difficult to pass the Wirth bill. I think we can pass my bill. And therefore, although I support that, if the Committee decides to report out the bill that I brought here to the Committee, and the bill which is moving forward in the House, I

will be very satisfied with that, and we will think that we have done yeoman work.

And I am a realist enough to know that the legislative process does involve some give and take and some compromise. So, when Senator Wirth asked me to go on his bill after I had gone on board with respect to my bill, I had no difficulty in doing that. Although it is only fair to say that normally I would not be in that position. But I think Senator Wirth's bill has an uphill battle in order to get passed, whereas I think that there is a reasonable disposition on the part of the Congress to pass my bill.

Senator MCCAIN. So, from a spiritual standpoint, you would rather see Senator Wirth's bill, but from a pragmatic and practical viewpoint, in the interest of getting legislation through the Congress, you would like to see your bill?

Senator METZENBAUM. That is correct. I think one represents hope and the other one represents reality.

Senator MCCAIN. Thank you.

Thank you very much, Mr. Chairman.

Senator STEVENS. One last question, Mr. Chairman.

Howard, you have seen the VCRs for children, I assume?

Senator METZENBAUM. Some, yes.

Senator STEVENS. Do you think we could prohibit the introduction that advertises various items on those VCRs that we rent for showing at home?

Senator METZENBAUM. Frankly, I must say that I do not think I have seen the VCRs that carry advertising. If you tell me that they do, I——

Senator STEVENS. Well, they do. They not only advertise other videos, but they also advertise toys. There is an advertising section on the head of some of those VCRs. Now could we prohibit that?

Senator METZENBAUM. I do not think so.

Senator STEVENS. Neither do I.

Senator METZENBAUM. I do not think so. I do not think so.

Senator INOUYE. I would like to make a few observations. They may not be correct, but I believe they are. Up until the time when we began deregulating the activities of the government, I believe it was well recognized by the government and by the courts that time limitations were a valid way of regulating or controlling commercial television. In fact, that has been the case throughout the history, since 1934.

And furthermore, on children's television, I believe the courts have recognized that children could be specially treated because they had great difficulty in differentiating between a show and a commercial, and therefore required some protection. The same sort of argument that we make that maybe the government should step in and call upon broadcasters to limit ads on bourbon and scotch, so we do not have any. Beer, you cannot touch it on your lips. Cigarette smoking is out because it is not good for your health.

And the government took it upon itself that, in the best interest of the citizenry, such protection must be provided by the government. And in the case of children, when you are very young, I think the courts have ruled that since they have difficulty in differentiating what is a commercial ad and what is not, something should be done.

So I think we are on pretty valid grounds on the Constitution here. I may be wrong, but that is my observation.

Senator METZENBAUM. I agree with the Chairman.

Senator INOUYE. Once again, I thank you very much, Senator Metzenbaum, for your contribution today. And as one member of this committee, I can assure you that these two bills will be given the most serious consideration.

Senator METZENBAUM. Thank you very much, Mr. Chairman, and the other members of the Committee.

Senator INOUYE. Thank you.

And now we have a panel of witnesses consisting of Mrs. Peggy Charren, President of Action for Children's Television; Mr. Edward O. Fritts, President, National Association of Broadcasters; Mr. DeWitt F. Helm, Jr., President, Association of National Advertisers; Dr. Dale Kunkle, Assistant Professor, Department of Telecommunications, Indiana University; Mrs. Sharon Robinson, Director, Instruction and Professional Development, NEA; and Dr. Frank Palumbo, American Academy of Pediatrics.

Ladies and gentlemen, I thank you for your participation this morning. As I have indicated, I consider this responsibility to be of the highest priority of this subcommittee. And so may I first call upon the President of the Action for Children's Television, Mrs. Charren.

STATEMENT OF PEGGY CHARREN, PRESIDENT, ACTION FOR CHILDREN'S TELEVISION

Mrs. CHARREN. Thank you, Mr. Chairman. It is a pleasure to be at the Senate testifying on this very important issue.

I strongly support the passage of S. 707. As Senator Wirth mentioned, the broadcaster is given free use of a scarce public resource upon condition that it serves the public interest. And that public trustee obligation, if it means anything, means public service for the child audience.

Yet in this decade, we had an FCC chairman who publicly announced that broadcasters had no duty to children to which they would be held responsible at renewal. In a 1974 report, the FCC, under a Republican Chairman, Richard Wiley, stressed the broadcaster's duty to present a reasonable amount of educational and informational fare.

In 1984 the FCC issued a new report omitting any reference to that duty. In the 1974 report, the FCC adopted safeguards against over-commercialization on children's television programming. And in 1984 and 1986, the FCC eliminated its limits on commercials in children's fare, saying that the marketplace should control.

Worse, this FCC overruled a long-standing precedent and allowed program-length commercials for children—half-hour programs built deliberately around toy products.

This is a shameful record. A great nation should not cheat its children.

So there is an urgent need for legislation. The next question, naturally, is what kind of legislation. And here I believe we must frankly face a pragmatic consideration.

ACT began this effort a generation ago with the request for two hours a day of informational/educational fare and with no commercials in programs designed specifically for the preschooler. I do not have to tell you that that effort did not succeed.

ACT also strongly supported the efforts of Senator Lautenberg and then Representative Wirth to enact legislation that would have required five to seven hours a week of such programming.

I state the obvious when I say that ACT still wholeheartedly believes in the above proposals, but I also state the obvious when I acknowledge that they cannot be enacted. Here, as in so many areas, there must be a consensus if real progress is to be made.

On the House side, ACT was therefore a party to negotiations that led to such consensus legislation. From ACT's standpoint, such legislation does not reflect the best, nor of course does it do so from the broadcaster's point of view. But the best here, because it cannot be enacted, is the enemy of the good. And it is time—indeed long past time—that the good becomes law.

S. 707 constitutes good legislation—a most constructive step forward. First, it makes explicit the broadcaster's duty to serve the educational and informational needs of children in its overall programming. That would constitute the only such programming reference in the whole Communications Act. Congress would thus be saying to broadcasters: When you discharge your obligation to operate in the public interest, the child audience is unique, and you must therefore uniquely render public service to that audience.

It has been argued that because the legislation refers to overall programming, the broadcaster will simply rely on adult fare as meeting its obligation. ACT has never objected to broadcasters including such adult presentations, where appropriate. It would be arbitrary to exclude such programming from review at renewal, and would raise serious legal problems upon judicial review.

But at the same time, ACT points out that adult fare alone cannot possibly be relied upon as fully or reasonably meeting the public service obligation to children. Indeed, the very existence of children's libraries is proof that the educational needs of young people cannot be met by adult fare.

More important, the bill would require FCC focus at renewal on this critical area. The Commission states that it is relying on the public to bring to its attention inadequate public service. But the public understandably does not go to the stations' offices and look over the illustrative programs in the public file to determine whether they add up to adequate service. The obligation is imposed on the Commission to determine whether renewal is warranted, and it has unreasonably shifted that accounting obligation to the public.

S. 707 would reverse that in the area of children's programming. The FCC at renewal would have to determine whether the broadcaster had met its obligation to render public service to children. The broadcaster would therefore have to cull out the programs meeting the educational and information needs of children, and at renewal send the annual list of that programming to the FCC, which must then determine if the station had acted in the broadcasting Act's standard.

Mr. Chairman, I believe that again this sends a powerful message to the broadcaster. For this is one area where the broadcaster and the FCC must specifically focus at renewal.

Finally, S. 707 restores the cap on over-commercialization—ten-and-a-half minutes on Saturday and Sunday, and 12 during the week. The former represents a one minute increase over the previous standard, and was accepted as a compromise within the ballpark. Obviously, both those numbers are too high.

The largest public interest issue in this area, the program-length commercial, is left to resolution in the pending FCC proceedings and possible further judicial review.

These are most constructive steps and I would therefore hope that S. 707 in its present form or strengthened in any way that can be enacted within the consensus context, would be speedily passed and sent to President Bush.

I hope and believe that unlike President Reagan who pocket vetoed the predecessor bill, that President Bush, the "education" president, would sign the bill.

I have attached to this statement an appendix saying why I believe the bill is constitutional, and I will not discuss that here.

I do want to raise one aspect of this constitutional argument, though, that baffles me. President Reagan, in his veto statement, said that however commendable the bill's purpose, it interferes with the editorial discretion of the broadcaster and thus violates the First Amendment. But clearly the whole thrust of the Communications Act is to interfere with editorial discretion. It says to the broadcaster: You get this license free, but you have to render a reasonable amount of public service programming.

So the Reagan administration seems to be saying that the broadcaster can never be called to account to render any public service; that it can operate precisely as it wishes, rendering 100 percent home shopping if it feels like it, or MTV, and still be renewed, otherwise the government would be interfering.

The position of the Reagan administration, I believe, wipes out the Act, and leads logically to auctions of substantial spectrum usage fees. And I am baffled by how such a revolutionary position is taken by a conservative administration, and how its drastic import can be so ignored by the media and scholars.

Thank you for the opportunity to testify.

[The statement follows:]

Statement of Peggy Charren
President, Action for Children's Television
On S. 707
July 12, 1989

Thank you for the opportunity to testify on this most important matter. I strongly support passage of S. 707.

First, there is a great need for remedial legislation in this area. No discussion is necessary on how important children are to the future of this nation. Young children continue to watch television 25 hours or so a week, and, upon graduation from high school, will have spent more time before the TV set than in school. It follows, especially as we enter the information society, that children should have available programming that not only entertains but also educates and informs. The broadcaster is given free use of a scarce public resource upon condition that it serve the public interest: That public trustee obligation, if it means anything, means public service for the child audience.

Yet in this decade, we had an FCC Chairman who publicly announced that broadcasters had no duty to children to which they would be held responsible at renewal. In a 1974 Report, the FCC, under a Republican Chairman Richard Wiley, stressed the broadcaster's duty to present a reasonable amount of educational and informational fare. In 1984 the FCC issued a new report omitting any reference to that duty. In the 1974 Report, the FCC, pointing out that young children do not have the ability to distinguish between programming and advertising material, adopted safeguards against over-commercialization on children's TV programming. In 1984 and 1986, the FCC eliminated its limits on

commercials in children's fare; saying that the marketplace should control. Worse, this FCC overruled a long-standing precedent and allowed program-length commercials for children -- half-hour programs built deliberately around toy products.

This is a shameful record. A great nation should not cheat its children. Mr. Chairman, I urge you to compare this FCC's record with the policies of countries like Great Britain, Japan, and Australia.

So there is an urgent need for legislation. The next question naturally is, what kind of legislation? And here I believe that we must frankly face a pragmatic consideration.

ACT began this effort a generation ago with the request for two hours a day of informational/educational fare and with no commercials in programs designed specifically for the pre-schooler. That effort did not succeed.

ACT also strongly supported the efforts of Senator Lautenberg and then Representative Wirth to enact legislation that would have required 5-7 hours a week of such programming.

I state the obvious when I say that ACT still wholeheartedly believes in the above proposals. But I also state the obvious when I acknowledge that they cannot be enacted. Here, as in so many areas, there must be a consensus if real progress is to be made. On the House side, ACT was therefore a party to negotiations that led to such consensus legislation. From ACT's standpoint, such legislation does not reflect the best (nor of course does it do so from the broadcaster's point of view). But the best here, because it cannot be enacted, is the enemy

of the good. And it is time -- indeed long past time -- that the good becomes law.

S. 707 constitutes good legislation -- a most constructive step forward. First, it makes explicit the broadcaster's duty to serve the educational and informational needs of children in its overall programming. That would constitute the only such programming reference in the whole Communications Act. Congress would thus be saying to the broadcasters: "When you discharge your obligation to operate in the public interest, the child audience is unique, and you must therefore uniquely render public service to that audience."

It has been argued that because the legislation refers to "overall programming," the broadcaster will simply rely on adult fare as meeting its obligation. ACT has never objected to broadcasters including such adult presentations, where appropriate. It would be arbitrary to exclude such programming from review at renewal, and would raise serious legal problems upon judicial review.

At the same time, ACT points out that adult fare alone cannot possibly be relied upon as fully or reasonably meeting the public service obligation to children. Indeed, the very existence of children's libraries is proof that the educational needs of young people cannot be met by adult fare. For example, young children constitute a significant portion of the child audience, and there is simply no way that an adult program can be cited as meeting the educational or informational needs of the pre-schooler. Only programming designed for and directed to the pre-schooler

can do that. In short, S. 707 allows considerable discretion and flexibility but the obligation imposed must be reasonably met.

Most important, the bill would require FCC focus at renewal on this critical area. The FCC now simply gets a postcard at renewal. It thus has no programming information before it. The Commission states that it is relying on the public to bring to its attention inadequate public service. This is a joke, and a bad one. The public understandably does not go to the station's offices, and look over the illustrative programs in the public file, to determine whether they add up to adequate service. The obligation is imposed on the Commission to determine whether renewal is warranted, and it has unreasonably and impracticably shifted that accounting obligation to the public.

S. 707 would reverse that in the area of children's programming. The FCC at renewal would have to determine whether the broadcaster has met its obligation to render public service to children (and has not over-commercialized). The broadcaster would therefore have to cull out the programs meeting the educational and information needs of children, and at renewal send the annual lists of that programming to the FCC, which must then examine it and determine whether it meets the Act's standard. Mr. Chairman, I believe that again this sends a powerful message to the broadcaster. For again this is the one area where the broadcaster and the FCC must specifically focus at renewal -- no reliance on postcards and inference is permissible.

Finally, S. 707 restores the cap on over-commercialization -- 10½ minutes on Saturday and Sunday, 12 minutes on weekdays.

The former represents a one minute increase over the previous standard (9½), and was accepted as a compromise within the ballpark. The largest public interest issue in this area, the program length commercial, is left to resolution in the pending FCC proceedings and possible further judicial review.

These are most constructive steps, and I would therefore hope that S. 707 -- in its present form or strengthened in any way that can be enacted within the consensus context -- would be speedily passed and sent to President Bush. I would hope that unlike President Reagan who pocket vetoed the predecessor bill, President Bush, the "education" President, would sign the bill, and leave questions of its constitutionality to the courts.

On that issue, I have attached to this Statement a brief appendix setting forth why I believe the bill is clearly constitutional. I will not discuss the legal points there made.

However, I do want to raise one aspect of this constitutional argument that amazes and baffles me. President Reagan, in his veto statement, said that however commendable the bill's purpose, it interferes with the editorial discretion of the broadcaster and thus violates the First Amendment. But clearly the whole thrust of the Communications Act is to interfere with editorial discretion -- to say to the broadcaster, "You get the license free but must render a reasonable amount of public service programming [called community issue-oriented programming by this FCC]." The Reagan Administration is thus saying that the broadcaster can never be called to account to

render any public service -- that it can operate precisely as it wishes, rendering 100% home shopping or MTV, and still be renewed, since otherwise the Government is interfering with editorial discretion.

That's amazing. Further, if it is right -- if the broadcasters agree with it -- they should not be here arguing for "must carry." They should frankly come before you, and say that since we can now operate as we want, you can auction the frequency or channel. That's how the Government passes out scarce privileges for commercial purposes, like off-shore oil leases. The broadcasters can't have it both ways: They can't say that this is ours to use as we want, but we want it free and further, if someone jumps our channel, the Government must stop such interference. Clearly, in such a scheme, I would be before you arguing that the sums obtained be used in some substantial part as an endowment to produce and distribute educational and informational children's fare.

I'm not here arguing for such a drastic scheme. I am here pointing out that the position of the Reagan Administration wipes out the Act, and leads logically to auctions or substantial spectrum usage fees. And I am baffled by how such a revolutionary position is taken by a conservative Administration, and how its drastic import can be so ignored by the media and scholars.

Appendix

There is no question but that the above provision requiring that the television broadcaster serve the educational and informational needs of children is constitutional. It is now well established that in exchange for "the free and exclusive use of a valuable part of the public domain," the broadcaster can be required to act as a public fiduciary, obligated to serve the needs and interests of its area. See Office of Communication of United Church of Christ v. FCC, 359 F.2d 997, 1003 (D.C. Cir. 1966). Thus, in the lead case, Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), the Supreme Court affirmed the constitutionality of the public trustee scheme with its concern for program content. The Court held that "[I]t is the right of the viewers and listeners, not the right of the broadcasters which is paramount." Id. at 390. The Court stated that the Commission does not violate the First Amendment by "interesting itself in...the kinds of programs broadcast by licensees." Ibid. See also FCC v. NCCB, 436 U.S. 775, 799-800 (1978) ("Requiring those who wish to obtain a broadcast license to demonstrate that such would serve the 'public interest' does not restrict the speech of those who are denied licenses..."); NBC v. U.S., 319 U.S. 190, 215 (1943) (the Commission is not simply a traffic cop but rather has the obligation "of determining the composition of that traffic").

As part of the public interest obligation, broadcasters can and indeed must be required to render public service to

children. Children are the bedrock upon which our society rests (Prince v. Massachusetts, 321 U.S. 158, 168 (1943)), and they watch a great deal of television. In these circumstances, the broadcaster as a public fiduciary must provide programming serving the informational and educational needs of children.

Significantly, the FCC has so held, and been affirmed by the court. See Children's Television Report, 50 FCC2d 1, 5-6, affirmed, Action for Children's Television v. FCC, 564 F.2d 458 (D.C. Cir. 1977):

> The broadcaster's public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs of the child audience. In this regard, educational or informational programming for children is of particular importance. It seems to us that the use of television to further the educational and cultural development of America's children bears a direct relationship to the licensee's obligation under the Communications Act to operate in the 'public interest.'

In its 1984 Report, TV Programming for Children, 96 FCC2d 634, the Commission, while eschewing programming quotas or specific program scheduling requirements, continued to stress "...the general licensee obligations emphasized by the Commission in its 1974 Children's Television Policy Statement...," stating

> We continue to believe "that the broadcasters' public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience. The record reflects that the child audience is a unique one that warrants special programming attention from licensees.

The Commission therefore concluded that "...there is a continuing duty, under the public interest standard, on each licensee to examine the program needs of the child part of the audience and to be ready to demonstrate at renewal time its attention

to those needs." The above statutory provision simply makes clear that the television licensee must be able to show at renewal that it has rendered public service to this unique audience.

Such public service obviously cannot consist solely of meeting the entertainment needs of children, any more than it would in the case of adults. See FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981), establishing that entertainment is properly a matter for the marketplace. Rather, the programming must also educate or inform the child, as well as entertain. See 1974 Programming Statement, supra, 50 FCC2d at 5-6. Of course, entertainment programming, including that not specifically designed for children, can also contribute in this respect. See 1984 Report, 96 FCC2d at 650. What is critical, as stated by the Commission, is that the public service needs of this unique audience, so vital to our nation's growth, be served.

Under Red Lion, there can be no question of the constitutionality of the provision. In FCC v. League of Women Voters of California, 468 U.S. 364 (1984), the Court did apply a "substantial interest" and "narrowly tailored" test after noting that it traditionally followed a different approach in evaluating First Amendment issues in the broadcast field. The interest here involved, promotion of the welfare of our children, is indisputably substantial. That is why this audience alone is regarded as unique and requiring special attention by all television licensees. See 1974 and 1984 FCC Reports. Indeed, it is difficult to think of an interest more substantial than the promotion of the welfare of children.

It is this interest which has justified "channeling" of other constitutionally-protected speech, such as "indecent" programming. See FCC v. Pacifica Foundation, 438 U.S. 726 (1978). The FCC has recently found that "to promote the content-neutral and significant governmental interest in safeguarding the well-being of the nation's youth" is constitutionally permissible, citing Renton v. Playtime Theatres, 106 S.Ct. 925 (1986). Memorandum Opinion and Order re Pacifica Foundation, FCC #87-138, released April 29, 1987 at 5, fn.3; see also Ginsberg v. New York, 390 US. 629 (1968). There thus can be no doubt as to the substantiality of this governmental interest.

And the provision here is narrowly and appropriately tailored to accomplish this substantial interest. It does not exclude any programming that does in fact serve the educational and informational needs of children; rather the broadcaster has full discretion to meet its public service obligation in the way it deems best suited. What the provision requires is that television broadcasters do act in the public interest in this important regard and that the Commission at renewal obtain assurance that they have done so. Surely, this is a reasonable and permissible requirement in a public trustee scheme. See Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1427-28 (D.C. Cir. 1983).

Senator INOUYE. I thank you very much, Mrs. Charren.
Mr. Fritts.

STATEMENT OF EDWARD O. FRITTS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. FRITTS. Thank you, Mr. Chairman.

We appreciate the opportunity to appear before this subcommittee today to discuss the issue of children's television and these two specific bills which have been introduced on this issue.

And clearly it is indeed always a pleasure to continue to work with our friend, Peggy Charren, who does such good work with Action for Children's Television.

Frankly, Mr. Chairman, we had hoped that this hearing would not be necessary. In the previous Congress, we worked together with members of Congress to develop a consensus bill, which passed overwhelmingly, but which, as has been referenced here this morning, was pocket vetoed by President Reagan.

As a result, we are back at this issue again. And I would like to briefly summarize NAB's views on the two bills which are the focus of today's hearing.

First, let me begin by saying that concern over children's television is not a new issue, nor is it one which is being ignored by the broadcasting industry. We, like you, are parents. And we realize the role that television plays in the lives of our children. We also recognize that our licenses carry with them the obligation to serve children in our communities. Despite what some may believe, the FCC has never relieved us of that obligation.

Second, children's television itself has changed in recent years. No longer is free over-the-air television the only source of programming for young people. Cable, both pay and basic, and videocassettes, have provided numerous additional alternative sources of programming for children and their parents—which, by the way, are not regulated as we are. And then add to that the public broadcasting fare as well.

Thus, broadcasters face a marketplace where their audience share has declined for children's programming, while production costs and competition from unregulated media have increased.

Further restrictions and more stringent programming requirements run the risk of knocking the children's television marketplace even further out of balance. My written testimony includes a study which details the rapidly expanding diversity and complexity of today's children's programming.

Nonetheless, we are willing to accept S. 707, the successor to H.R. 3966, which Congress passed last year. Like its predecessor, S. 707 would cap the overall amount of children's advertising in children's programming and would codify our obligations to serve the educational and informational needs of young people. We see this bill as a reasonable compromise.

However, our feelings are different on S. 1215, the legislation proposed by Senator Wirth. While this bill has advertising caps and license review provisions, it goes well beyond the compromise provisions of S. 707. It attempts to specifically legislate content, which we believe clearly violates the First Amendment.

Specifically, S. 1215 requires the FCC to consider whether a licensee has provided programming especially created for children, both preschool and school-aged. Such specific content restrictions clearly go beyond the basic provisions of S. 707, which require the Commission to review a licensee's effort at serving young people in its overall programming effort.

Such a requirement also ignores the totality of programming which broadcasters provide to family audiences. Indeed, many children watch more programming which we would classify as "for all ages" than they do specific "children's" programs. And by placing a premium on only specific children's programs, S. 1215 does not give broadcasters either credit for, or an incentive to include, family programming throughout their schedule, including the evening hours when millions of young people enjoy television.

This provision is not the best approach to take in encouraging stations to provide children's programming.

S. 1215 also requires that stations identify both in program guides and immediately prior to the program itself, on the screen, programs which meet these standards. In essence, the broadcasters would be required to label programs as being for children, ostensibly to assist parents in finding programs of value for their kids to watch.

We oppose this provision as being unnecessary as a regulatory burden on stations, and because we fail to see how such labeling programs would increase viewership. Parents already can and do supervise their children's viewing habits, and have a much greater impact on those programs selected than placing labels on program guides and programs.

And we also oppose the way in which S. 1215 defines commercial matter in children's programming. In essence, we could see licensees and their program suppliers forced to open up their books on all children's programming. These sections also add onerous regulatory burdens on both television stations and program syndicators by requiring that they prove that any barter arrangement in children's programming provides fair compensation to the program's supplier. It is beyond us how the FCC could decide what compensation is fair or unfair, and it is totally impossible to predict.

Mr. Chairman, S. 707 reaffirms and codifies our industry's longstanding obligations to provide programming for children. It also recognizes that advertising is needed to support that programming, while ensuring that such programs are not over-commercialized.

It acknowledges that Congress should not attempt to directly regulate program content. It is the same bill which members of Congress, public interest groups and the NAB all worked so hard to develop last year. In the eyes of some, it may not be a perfect bill, but we believe it is a fair and reasonable compromise on which each side has found the middle ground.

It is clear to us that while S. 707 as written likely would avoid or survive a possible Presidential veto, S. 1215 does not have that standing.

In summary, NAB again will not oppose the passage of S. 707. But we strongly urge the Committee to reject S. 1215—legislation which we believe goes well beyond the limits of appropriate congressional action, and which we find unwise and unworkable.

As always, we appreciate the opportunity to testify here today. And we look forward to continuing working with you on these and other issues.

Thank you.

[The statement follows:]

STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF BROADCASTERS

Good morning. I am Eddie Fritts, President and Chief Executive Officer of the National Association of Broadcasters. NAB represents 970 television stations and the major broadcast networks, as well as more than 5100 radio stations.

It is unfortunate that today's hearing is necessary. In the 100th Congress, NAB worked long and hard with members of Congress to develop consensus children's television legislation. When Congress overwhelmingly passed H.R. 3966, we believed, as did many of you, that not only did this represent significant legislation, but also the beginnings of better cooperation between the broadcast industry and the legislative branch. And like many of you, we were dismayed when the President unexpectedly decided to pocket veto H.R. 3966. Nonetheless, because children's television legislation again is at the top of your communications agenda, I welcome the opportunity to provide NAB's views on S. 707, Senator Metzenbaum's Children's Television Act of 1989, and S. 1215, Senator Wirth's Children's Television Education Act of 1989.

Children's television has been a controversial and vexing issue for society throughout the relatively brief history of television. The number and variety of children's television bills that have been introduced in Congress demonstrate the ongoing complexity of this area. In recent years, this push for legislation has been fueled by the mistaken perception that the Federal Communications Commission has totally eliminated television broadcasters' obligations to the children in their audiences.

Typically, children's television legislation has focused on two related issues—children's programming, and the advertising in that programming. The bills that are the subject of today's hearing continue that trend.

Until the 100th Congress, NAB has been in a position in which we have been obligated to oppose children's television legislation. I can assure you that we have not taken this position merely out of arrogance, or out of some reflexive desire to avoid any and all regulation of our activities.

Broadcasters realize that we have a unique and special role in our society. Our licenses bring with them certain obligations, and we have long recognized that children are an important element of the public we are licensed to serve. Let me also note that contrary to conventional wisdom, the FCC never has eliminated our affirmative responsibilities with respect to children. In addition to being broadcasters, we are parents, too, who are concerned about the welfare of our children, and the impact of this influential medium on them.

While we are sensitive to our obligations to children, the vast majority of the children's television bills introduced in Congress over the years has been unnecessary, unwise, or unworkable. A number would inject the federal government into qualitative or quantitative judgments on content issues, in conflict with the First Amendment. Most have not been sensitive to the realities of the video marketplace, nor have they taken into account the consequences of imposing overly stringent regulations on only the commercial television segment of that marketplace.

THE CHANGING CHILDREN'S VIDEO MARKETPLACE

I have attached [1] to my testimony a study which summarizes the diversity and complexity of today's children's video marketplace. This study demonstrates that while commercial television stations used to be the sole provider of children's programming, today such programming is widely available on public television stations, cable "superstations," basic cable services and pay cable channels. In addition, the rapid penetration of video cassette recorders has greatly expanded viewing options for children. Not only do parents use VCRs to develop "libraries" of children's programming recorded from over-the-air and cable services, but VCRs also are used to play rented or purchased prerecorded programming.

Thus, the children's television marketplace is increasingly fragmented, and commercial television stations face growing competition both for programming and au-

[1] The attachments were not reproducible.

diences. Between 1983 and 1987, viewing among children from ages 6–11 declined more than 20%, while viewing among children from ages 2–5 declined more than 15%. During the same period, the cost of a network children's show increased 275%, from $80,000 to $220,000.

The changed nature of the children's marketplace has a number of implications for your consideration of children's television legislation. The media which compete with us may not have the same public interest obligations that we do, and we are not attempting to shirk our legitimate responsibilities. Nonetheless, if overly severe or restrictive burdens are placed on broadcasting, either in terms of programming requirements or in caps on advertising, the marketplace will be skewed. Among the various providers of children's programming, only commercial television is supported solely by advertising revenues. Unintended incentives may be created in legislation for children's programming to migrate to competing outlets. Broadcast television may find it even more difficult to secure or produce programming, at the same time that declining viewing among children reduces even further the revenues to support programming.

The Subcommittee should keep this video marketplace in mind as it examines the pending legislation. Although both bills address the same basic issues—they would cap the overall amount of advertising in children's programming, and would spell out in statute television broadcasters' obligations to provide programming that serves children's educational and informational needs—there are significant differences between the two.

S. 707 is the successor to H.R. 3966, which Congress overwhelmingly adopted last year. NAB stands by the position we took on that legislation, and we will not oppose the passage of S. 707. S. 1215 goes well beyond the consensus provisions of S. 707 in a number of critical areas, and NAB strongly opposes its passage.

ADVERTISING AND COMMERCIAL MATTER

S. 707 caps advertising in children's programming at 10.5 minutes per hour on weekends, and 12 minutes per hour on weekdays. S. 1215 caps commercial matter in children's programming at 9.5 minutes per hour on weekends and 12 minutes per hour on weekdays. NAB believes that S. 707 strikes the appropriate balance. It accomplishes the goal of preventing over-commercialization in children's programming. At the same time, it better reflects commercial television's need for advertising to support its programming, and the changes in the children's video marketplace since advertising restrictions originally were imposed in 1974.

The utilization of the term "commercial matter" in S 1215 in setting caps on commercialization is significant. This term is defined to include all material broadcast by a station which involves any direct or indirect consideration between the station and a program provider. Furthermore, S. 1215 would require licensees who broadcast programs acquired on a barter basis to be able to demonstrate that their compensation to the program supplier is "fair." According to the sponsor of S. 1215, these provisions are intended to address so-called "program length commercials," children's programs which purportedly are broadcast to promote the sales of toys based on the programs.

It is clear that many popular children's toys are based on characters that first appeared in children's programs, and that other popular children's programs have been based on characters that first appeared as children's toys. Indeed, there is almost a "chicken and egg" quality about this issue—which comes first, the toy or the show? It is equally clear that a definition of program length commercial that captures children's programs that some people deem to be "bad," such as "Transformers," or "He-Man," also can capture children's programs some people deem to be "good," such as "Seasame Street" and Disney-based shows, which have toys associated with the program characters, too.

The challenge for those who would seek legislation to restrict program length commercials is to develop a standard which bans the types of programs they feel are bad, yet which protects the types of programs they feel are good. The threshold question, of course, is whether such qualitative judgments by the federal government are desirable or indeed constitutional. Beyond that, however, legislation to accomplish such ends is virtually impossible to draft. While S. 1215 does not attempt to directly ban program length commercials, as did some earlier proposals, its indirect approach still seeks to authorize the federal government to make vague, qualitative judgments.

Furthermore, these program length commercial provisions would impose severe regulatory burdens on broadcast stations and program providers, especially in the case of barter programming. The effect of S. 1215 would be to require both stations

and program providers to "open the books" on their financial dealings to the federal government, which could make children's programming even more difficult for stations to acquire. In addition, as other areas of broadcast regulation have demonstrated, the burden of proof on "fairness" is heavy, and determinations of fairness are not easy for the government to make.

PROGRAMMING OBLIGATIONS

Another significant distinction between S. 707 and S. 1215 is how these bills would define in statute television licensees' obligations to broadcast programming to children. S. 707 provides that at the time of license renewal, the FCC would review whether the licensee had "served the educational and informational needs of children in its overall programming." For the first time, television broadcasters' ongoing obligations to serve the child audience would be explicitly written into the Communications Act. And for the first time, NAB has acquiesced in the codification of such programming obligations. While we had to swallow hard in doing so in an area that raises such sensitive First Amendment concerns, we were committed to the development of consensus legislation.

While S. 707 sets out in statute television stations' obligations, it still provides us with the flexibility we need to complete in today's marketplace. Broadcasters would be permitted to base their programming mix in part on what other programming is available to children in their local communities. Furthermore, this standard recognizes the value that family-oriented programming provides to children. In addition to programming specifically targeted to children, young people also watch, enjoy, and are educated by family-oriented shows like "The Cosby Show," "The Wonder Years," and "Paradise." This programming flexibility was approved by the Court of Appeals in its review of the FCC's proceeding on children's television programming in 1985.

Thus, while S. 707 provides the flexibility local television stations need to serve their communities, it would not permit television licenses to rely solely on family-oriented programming in meeting their obligations to children. The legislative history to H.R. 3966, the predecessor of S. 707, makes it clear that television licensees will be obligated to provide in their overall programming mix some shows that are primarily intended for children.

The children's programming standard of S. 1215 is significantly different. It would require the FCC to determine whether a television licensee has provided "programming specifically designed to serve the educational and informational needs of both preschool and school-aged children." Thus, unlike S. 707, it would spell out in statute two explicit program content requirements—shows specifically directed at children, and the proviso that such shows target two distinct and separate age categories. In turn, it discounts the value of family-oriented programming to children.

NAB cannot acquiesce to the codification of such specific content requirements. We believe these provisions are unconstitutional, as well as unnecessary.

Finally, S. 1215 would require television stations to provide public notice of the programs that meet the bill's educational and informational content requirements, both in advance of a broadcast and immediately prior to a show. The sponsor of the bill envisions that this notice requirement will help parents to identify children's programming and to encourage their children to watch such shows.

NAB opposes these notice provisions. In addition to the constitutional questions land regulatory burdens raised by such government-mandated program labels, it is worth speculating whether these notices actually would promote children's viewing of the programming to which they were attached. I can think of no greater turn-off for some children than presenting them with a program labelled "good for you."

CONCLUSION

In conclusion, S. 707 would for the first time reemphasize and place in statutory form television broadcasters' long-standing obligation to provide programming for children. It does so while recognizing that broadcast children's television must be supported by advertising, yet it ensures that the programming will not be over-commercialized. Unlike S. 1215, it does not cross over the line and seek to impose unnecessary and unconstitutional requirements on program content.

S. 707 is the successor to the consensus legislation that members of Congress, public interest groups, and NAB worked so hard to develop. Some might argue that it is not perfect, or that more stingent requirements are needed. Broadcasters, in turn, have had to swallow hard to accept some of its provisions. That is the essence of a compromise—each side gives a little to achieve a positive result.

Consistent with our position last year, NAB will not oppose the passage of S. 707. We strongly urge the Committee to reject S. 1215 as unwise and unworkable.

Senator INOUYE. Thank you very much, Mr. Fritts.
Mr. Helm.

STATEMENT OF DEWITT F. HELM, JR., PRESIDENT, ASSOCIATION OF NATIONAL ADVERTISERS

Mr. HELM. Thank you, Mr. Chairman.

I appreciate this opportunity to testify.

Because I possibly may be labeled as a messenger with bad news, as both a parent and a grandparent, I must emphasize that the Association of National Advertisers strongly supports efforts to eliminate all false or deceptive advertising.

We believe that in the area of advertising directed to children, special attention needs to be taken. That is why we are a founding member and strong supporter of the Children's Advertising Review Unit, CARU, which monitors children's advertising on a self-regulatory basis to assure truthful, non-deceptive advertising to children.

CARU's children's advertising code makes clear that advertising techniques and strategies appropriate for adults may not be appropriate for children.

S. 707, the Children's Television Act of 1989, and S. 1215, the Children's Television Education Act of 1989, raise three serious concerns for ANA members.

First, arbitrary time limits pave the way for further restrictions. When ANA testified on the House companion bill to S. 707 on April 6th, we warned that adoption of arbitrary limits on the number of commercial minutes during children's programming lays the groundwork for further efforts to erode the ability of advertisers to market their products, and for further attempts to censor children's programming. That is one of the things that troubles us most about S. 1215.

And our concerns are clearly warranted. Already Senator Wirth's proposed legislation, S. 1215, not only reduces the amount of advertising that would be permitted under S. 707, but also categorizes many children's programs as commercial matter.

Senator Wirth apparently believes that any barter arrangement or any discount concerning children's programming, whatever the terms involved or however small the discount, clearly and immediately transforms or brands these programs as commercials.

Given the open-ended nature of this approach, many of the classics of children's television, from Winnie the Pooh, to Snow White and the Seven Dwarfs, to Sesame Street, could be threatened with elimination because stations often receive direct or indirect consideration for presenting these types of programs.

By defining these programs as advertisements, Senator Wirth is blurring the distinction between commercial and non-commercial speech. We believe the Subcommittee should oppose this effort.

Our second concern stems from the belief that the restrictions on advertising time contained in these bills will actually prove counterproductive to the Subcommittee's goal of increasing and improving the quality and quantity of children's programming.

To achieve better programming in the children's area, advertisers and program producers must have the flexibility to determine how best to balance the entertainment and educational needs of the audience with the financial requirements of good programming.

By dictating the number of commercial messages over which broadcasters must spread programming costs, Congress would be attempting to micromanage the economics of children's television.

And our third concern is the congressional imposition of arbitrary time limits on the amount of advertising during children's programming is unconstitutional. These concerns are not solely our own. The United States Department of Justice on April 11th, only five days after the House committee took action, clearly and unequivocally stated that the policy concerns addressed in H.R. 1677, the companion bill to S. 707, cannot override the requirements of the First Amendment.

The Justice Department concluded that if this bill is passed in its current form, we would recommend its disapproval. Now that is the second time the Department of Justice has provided this opinion.

According to the United States Supreme Court, any restriction of commercial speech must directly advance a substantial government interest in a manner narrowly tailored to reasonably fit the government interest. Congress cannot arbitrarily simply decide in the abstract that all children's advertising is bad. It must tie its actions to a substantial government interest.

If the government's interest is in restricting deceptive children's advertising, the proposed time limit restrictions would not advance directly this interest, because the restrictions apply to all advertising, not just deceptive advertising.

Now you cannot get rid of the rotten apples in a barrel by throwing out apples at random. By trying to reach misleading advertising by limiting all truthful and non-deceptive advertising, the restrictions are not narrowly tailored to reasonably fit the government's interest.

If the government's interest in protecting children is in protecting children, the proposed time limit restriction would not directly advance this interest, because whatever alleged harm is inherent in 12 minutes of advertising, is also inherent in ten minutes, or nine minutes, or five minutes.

To summarize our three points. Arbitrary time limits pave the way for further restrictions. The restrictions on advertising time contained in these bills actually will prove counterproductive to the Subcommittee's goals. And arbitrary time limits on the amount of truthful, non-deceptive advertising during children's programming are unconstitutional.

For these three reasons, ANA strongly urges the Subcommittee to reject both S. 707 and S. 1215 in regard to children's advertising.

In conclusion, ANA recognizes that children are a special audience and is committed fully to protecting them from false or deceptive advertising. But this goal can be accomplished without undermining First Amendment rights and the economic foundations of quality programming.

I will be happy to answer any questions you may have.

[The statement follows:]

Statement of the
Association of National Advertisers, Inc.
by
DeWitt F. Helm, Jr.
President

Mr. Chairman and Members of the Subcommittee:

The Association of National Advertisers (A.N.A.) greatly appreciates this opportunity to testify. The role of advertising in relationship to children's programming raises extremely important issues of great concern to our membership.

A.N.A., as many of you already are aware, represents the vast majority of national and regional advertisers in the United States. Our membership includes companies with over 2,000 subsidiaries, divisions and operating units located throughout the country. Our Members account for nearly 80% of all national and regional advertising expenditures in this Nation.

Today, we are directing our comments to two pieces of legislation, S. 707, the "Children's Television Act of 1989" and S. 1215, the "Children's Television Education Act of 1989."

Policy Goals

A.N.A. believes that placing arbitrary limits on commercial speech on the broadcast media, as mandated by S. 707 and S. 1215, will fail totally to further the laudable goals of increasing and improving the quality and quantity of children's programming. These restrictions, if anything, are likely to prove counterproductive and undermine these important goals.

A.N.A. also believes strongly that false or deceptive advertising deserves to be eradicated and that children particularly need this type of protection. It is for this reason that the Association of National Advertisers and its sister advertising associations, the American Association of Advertising Agencies and the American Advertising Federation, established an industry self-regulatory body, the National Advertising Division/National Advertising Review Board

(NAD/NARB) of the Council of Better Business Bureaus. Within the NAD/NARB system, a separate Children's Advertising Review Unit (CARU) operates to monitor and assure the truthfulness of children's advertising. CARU is sensitive to the fact that advertising which may be totally acceptable for adults can be misunderstood by children.

This strong self-regulatory commitment in the children's area is shared by the major television networks, all of which have developed stringent standards governing advertising directed to children, and by the Association of Independent Television Stations (INTV) which has embraced the CARU guidelines.

If specific abuses remain, A.N.A. will be glad to assist the efforts of the Federal Trade Commission, the Federal Communications Commission, the Children's Advertising Review Unit, and this Subcommittee to counteract false or deceptive advertising. A.N.A., however, strongly opposes imposition of the governmentally mandated restrictions on truthful, nondeceptive advertising of legal products contained in these Senate proposals. The restrictions serve no valid societal or governmental purpose. In fact, we believe these advertising time limit restrictions violate the First Amendment to the United States Constitution.

These concerns are not solely our own. The United States Department of Justice in a July 26, 1988 letter to then-Senate Majority Leader Robert C. Byrd clearly and unequivocally stated the Department's view that the restrictions contained in legislation passed by this Subcommittee last year, H.R. 3966, and identical to the provisions of S. 707, "which limit the duration of advertising in conjunction with children's programming, are unconstitutional." (D.O.J. letter, p.1) On April 11, 1989, the Department of Justice reaffirmed this view in response to the House Energy & Commerce Committee's approval of H.R. 1677, the companion legislation to S. 707. A copy of the Department's latest letter is appended to this testimony for the Subcommittee's consideration. The Department of Justice concludes in its letter of April 11, 1989 that:

> [B]ecause of the difficulty of defining 'childrens programming', any attempt to regulate advertising practices directed at children is constitutionally problematic. Moreover, even if such programming can be satisfactorily defined, we are concerned that a blanket limitation of the amount of advertising is unreasonable. For the foregoing reasons, if this bill is passed in its current form, we would recommend its disapproval.

"Program-length Commercials"

When A.N.A. testified before the House Energy & Commerce Subcommittee on Telecommunications & Finance on April 6, 1989 it warned that the adoption of limits on the number of commercial minutes during children's programming lays the groundwork for future efforts to erode further the ability of advertisers to market their products and for further attempts to censor children's programming, a step clearly violative of the First Amendment.

Our concerns clearly were warranted. Already Senator Wirth's proposed legislation, S. 1215, not only reduces the amount of advertising that would be permitted under S. 707 but also categorizes many children's programs as "commercial matter". Defining programs in this manner in conjunction with the imposition of commercial time limits will effectively impose a death sentence on all such programming.

Under Senator Wirth's proposal, "commercial matter" is defined as all matter, "for which any money, service or other valuable consideration is directly or indirectly paid to or promised to . . . the station so broadcasting, from any person, regardless of whether such matter is entirely commercial in content" (emphasis added). Given the broad sweep and open-ended nature of this definition, many of the classics of children's television from "Winnie the Pooh" to "Snow White and the Seven Dwarfs" to "Sesame Street" could be threatened with elimination because stations often receive direct or indirect consideration for presenting these types of programs.

Senator Wirth apparently believes that any barter arrangement or any discount concerning "children's programming," whatever the terms involved or however small the discount, clearly and immediately transforms or brands these programs as commercials. This simplistic, arbitrary and mechanical approach totally ignores the realities of the marketplace. As the FCC unequivocally has stated, "Program suppliers frequently offer discounts for a variety of business reasons that are not associated with any intent to promote the material furnished." (emphasis added), (FCC Order 89-194, June 2, 1989, p. 7).

In effect, Senator Wirth, by defining these programs as advertisements and thereby having them removed from the air because they do not meet his arbitrary advertising time limits, is attempting backdoor censorship. If accepted, this approach would allow the government to reach out and stamp out a vast amount of noncommercial speech. A.N.A. believes that this approach threatens the freedom of writers, producers, artists and all others involved in the creative development of children's programming. What Senator Wirth's proposal would do is capriciously and irreparably to blur the distinction between commercial and noncommercial speech. This Subcommittee should oppose this effort to regulate the content of children's programming under the guise of regulating commercial speech.

Finally, Senator Wirth in his June 21, 1989 Senate floor statement appears to suggest that any program that features or contains a character that also may be sold commercially as a toy or other product inherently marks that program as an advertisement. This simply is false. "Sesame Street," which Senator Wirth holds up as an exemplar of good children's programming, clearly would be treated as an advertisement under this test. A multitude of "Sesame Street" characters are featured as toys, books, and a myriad of other products.

Clearly, commercials can masquerade as programs. But the F.T.C. and the FCC already have all the power they need to ban or restrict these psuedo-programs. In light of the key constitutional issues involved, making a determination as to whether a program is merely a disguised advertisement must be carried out with extreme care and precision. S. 1215 tries to carry out this delicate operation with a legislative meat-axe rather than a scalpel and this imprecision is constitutionally impermissible.

"Children's Programming"

The advertising restrictions contained in S. 707 of not more than ten and one-half minutes per hour on weekends and not more than twelve minutes per hour on weekdays in "children's programming" (S. 707 Section 3(b)) and the "commercial matter" restrictions found in S. 1215 of not more than nine and one-half minutes per hour on weekends and not more than twelve minutes per hour on weekdays in "children's television programming" (S. 1215 Section 3(a)(1)) raise fundamental issues. The first issue is one of definition. The attempt to define "children's programming" in both bills as a trigger for limiting advertising time is constitutionally suspect. The Federal Trade Commission as part of its analysis of the children's advertising issue, for example, found that "an effective ban on television advertising directed or seen by audiences composed of a majority or substantial share of young children cannot be implemented on the basis of audience composition data . . . or of definitions of advertising directed to children." (F.T.C. Final Staff Report and Recommendation In The Matter of Children's Advertising, 43 Fed. Reg. 17967, March 31, 1981, p. 37, 42).

Because the proposals do not define the term "children's programming", S. 707 and S. 1215 fail completely, in imposing advertising time restrictions, to make adequate distinctions between the impact of these advertising limits on young children, older children (who are cognizant of the existence and purpose of advertising) and adults. These bills would impact severely older children and adults; more than one-third of the audience of "Pee Wee's Playhouse," for

example, which airs on Saturday mornings, is twelve years old or older. Many other so-called "children's programs" have heavy viewership of older children and adults. As the Department of Justice has stated:

> . . . any restriction on speech, even one justified by the special susceptibility of children, cannot 'limit [discourse] to that which would be suitable to a sandbox.' Bolger v. Youngs Drug Products, 463 U.S. 60, 74 (1983). Inasmuch as the bill either fails to include within it most programs and advertisements watched by children, or would radically limit the amount and types of programs and advertisements adults may watch, it is unlikely to withstand judicial scrutiny. (D.O.J. letter, p.8)

Weekdays and Weekends

The arbitrariness of this approach is further exacerbated by the fact that even in regard to programs characterized as "produced for children" the same television program with the same audience will face more or less stringent advertising restrictions depending on whether the program airs on a weekday or on a weekend: 12 minutes (S.707 and S. 1215) v. 10.5 minutes (S. 707) and 9.5 minutes (S. 1215). There simply is no meaningful justification for placing greater limits on advertisement time during weekend programs.

Children and Advertising

As the Department of Justice pointed out, the legislation passed in the last Congress "seems to be based on the view that children are especially susceptible to advertising and that this susceptibility on the part of the audience makes the speech misleading." (D.O.J. letter, p. 9).

Even if one were to accept this view for the sake of argument, it raises serious questions as to the efficacy and appropriateness of the advertising restrictions contained in both bills. The "susceptibility" of children to the persuasiveness of advertising is not meaningfully related to the time involved. Whatever qualitative harm commercials supposedly would inflict in more than twelve minutes they would inflict in six minutes or five or any lesser amount of time.

This fact has constitutional significance. If limiting advertising time cannot transform the perceptual capabilities of children then the advertising time restriction remedy contained in S. 707 and S. 1215 cannot meet the United States Supreme Court test for constitutionality. This test requires that 1) advertising restrictions must be based upon a substantial governmental interest; 2) must directly advance that interest; and 3) must be narrowly tailored and reasonably fit the asserted governmental interest. See Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980) and Board of Trustees of the State University of New York v. Fox (No. 87-2013, 1989). As the proposed time limitations do not, nor can they increase the cognitive capabilities of children, this approach does not "directly advance" any substantial interest of the state. We believe strongly that truthful, nondeceptive advertising does not harm children and that proposals predicated on the assumption of the inherent harmfulness of children's advertising are misguided and counterproductive.

F.C.C. Guidelines and Congressionally Mandated Advertising Time Restrictions

While S. 707 and S. 1215 establish specific limits on the number of commercial minutes during children's programming, they provide no meaningful context in which to evaluate whether such limits "directly advance" and are "narrowly tailored to reasonably fit" the asserted governmental interest as required by the United States Supreme Court. It is not sufficient to assert simply that the time limits contained in S. 707 and S. 1215 are less stringent or identical to those limits previously adhered to by broadcasters voluntarily or pursuant to the 1974 FCC Policy Statement. In fashioning its time limits, S. 707 and S. 1215 appear to rely in general upon the former FCC advertising guidelines imposed in 1974 which were based on the old National Association of Broadcasters voluntary Code. However, in the last fifteen years major economic and constitutional changes have substantially transformed the environment for broadcast advertising. Both the FCC guidelines and the NAB

Code were adopted prior to a host of Supreme Court ruling that have held that commercial speech has substantial First Amendment protection. Neither the FCC nor the NAB were compelled, therefore, to clear the constitutional hurdles this Subcommittee now must face.

A.N.A. believes it is essential that advertisers and program producers be given the flexibility to best determine how to balance the entertainment needs of the audience with the financial requirements of good programming. These needs will necessarily vary over time, and the government should not establish arbitrary limits which straightjacket the ability of advertisers and programmers to respond effectively to the marketplace and the public they serve. By imposing limits on the number of commercial minutes per hour of children's programming, the Congress would be attempting to micromanage the economics of children's television.

Onerous and artificial limits on the amount of advertising time allowed during children's programming will erode rather than enhance efforts to improve the quality and quantity of children's television. This step would be highly ill-advised at a time when viewership surveys suggest that fewer children are watching children's television; competition among broadcasters and video options have fragmented the children's audience; and children's programming costs are skyrocketing.

Marketplace Constraints

Presently there are numerous forces that do and will continue to provide important constraints on the amount of television advertising provided to children and other segments of the population. The first and most obvious constraint is the time required for the programming itself in order to assure that it is effective in attracting viewers. Second, advertisers and broadcasters are sensitive to growing competition from other sources, including cable channels and video cassettes which carry little, if any,

advertising, and from the multitude of competing television channels on public and commercial television. Third is the advertiser's need for an effective environment for his advertising. Advertisers will seek to avoid a media environment in which too much advertising in a program effectively prevents any commercial from distinguishing itself. Obviously other factors, such as parental supervision, the individual station's own policy with regard to the amount of advertising it will air, and the cost of advertising on the broadcast media, all contribute to determining the amount of advertising during any programming period.

Conclusion

As S. 1215 already demonstrates, the time limits of 10.5 and 12 minutes contained in S. 707 will become a target for legislation reducing even further the number of commercial minutes permitted during children's programming and a target for expanding the definition of what will be considered commercial material subject to these time limits. Simply put, S. 707 throws open the door to vastly increased governmental censorship of the broadcast media.

A.N.A. beleives the imposition of arbitrary limits on the amount of truthful, nondeceptive advertising during "children's programming" is totally counterproductive. We believe these restrictions will undermine rather than enhance the goals of increasing the quality and quantity of children's programming. These types of restrictions are unconstitutional and do not provide any useful protection for children. The marketplace does place major constraints on the amount of advertising directed to children on the broadcast media. There just is no valid reason for the government to impose mandatory restrictions at this time. Finally, mandatory and arbitrary advertising time restrictions are an open invitation for further censorship and encroachment on the broadcasting media by the government. Therefore, we strongly urge the Subcommittee to reject both S. 707 and S. 1215.

0110M
July 6, 1989

ANA
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MEMBER, WORLD FEDERATION OF ADVERTISERS

August 15, 1989
A.N.A.'s 80th Year

Honorable Daniel K. Inouye
Chairman
Communications Subcommittee
Senate Commerce, Science and
Transportation Committee
227 Hart Senate Office Building
Washington, D. C. 20510-6130

Dear Mr. Chairman:

Pursuant to your letter of July 14, 1989 to our President, DeWitt F. Helm, Jr., the Association of National Advertisers appreciates this opportunity to respond to post hearing questions concerning children's advertising. We would ask that the attached remarks and this cover letter be made a part of the hearing record.

As we testified before the Subcommittee on July 12, 1989, A.N.A. firmly believes that imposing arbitrary limits on the number of commercial minutes allowed to be aired during "children's programming" raises extremely important constitutional issues and creates an impetus to increase censorship of commercial and noncommercial speech on the broadcast media. As S. 1215 already demonstrates, once time limit restrictions are proposed there will be immediate attempts to reduce these time limits further and to define commercial speech so broadly as to allow government restrictions of children's programming.

A.N.A. recognizes that children are a special audience and is committed fully to protecting them from false or deceptive advertising. But placing arbitrary limits on all advertising during children's programming is not only unconstitutional, but completely at odds with the laudable goals of increasing the quality and quantity of children's television.

On behalf of A.N.A. I thank you in advance for your consideration of our views. If you require any additional information, please let us know and we will try to provide it.

Best wishes,

Sincerely,

Daniel L. Jaffe

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GEORGE F. TYRRELL, Johnson & Johnson
JOHN T. WINDERWEEDEN, R.J. Reynolds Tobacco U.S.A.

August 15, 1989

Question: Can you name some programs that you consider "program-length commercials"?

Response: In a limited number of instances, advertisements have been found by the Federal Trade Commission (F.T.C.) to be deceptively disguised as programs. (See Attachment No. 1) These cases demonstrate that the F.T.C. already has all the power it needs to regulate so-called "program-length commercials" directed to adults or children and that new legislation in this area is not necessary.

In determining what is a "program-length commercial" the Congress, regulators and the courts must act within the constraints of the First Amendment to the Constitution.

In its recent decision in Board of the State University of New York v. Fox, No. 87-2013 (1989) the Supreme Court forcefully stated that, "commercial speech" must consist of speech that "proposes a commercial transaction" (emphasis in the original) slip op. at 12. Furthermore, the Court stated that in regulating commercial speech the regulation must directly advance a substantial government interest and be "narrowly tailored" to "reasonably fit" the asserted governmental interest. slip op. at 10.

We believe that S. 1215, because of the broad sweep of its definition of "commercial matter," fails to meet these constitutional tests and threatens to eliminate a vast amount of noncommercial speech. S. 1215 is premised on the totally unsubstantiated assumption that any "children's" program that

receives any discount or any barter arrangement, magically and automatically is transformed into an ad. As the Federal Communications Commission (FCC) unequivocally pointed out, "program suppliers frequently offer discounts for a variety of business reasons that are not associated with any intent to promote the material furnished." (emphasis added) (FCC Order 89-194, June 2, 1989, p. 7.).

The effect of S. 1215's arbitrary approach is to trample unconstitutionally on First Amendment protections while blurring completely the necessary distinctions between commercial and noncommercial speech.

Question: Hasn't there been a decline in recent years in what some consider the most egregious "program-length commercials?"

Response: This question requires clairvoyance. A.N.A. does not have the ability to read the minds of the various and disparate critics of children's programming or to know specifically in each instance how these critics define so-called "program-length commercials." S. 1215, the only concrete legislative attempt to identify what is a "program-length commercial," however, is so overbroad in its approach as to be thoroughly unconstitutional.

In passing, it may be worth noting that Senator Wirth in his introductory remarks to S. 1215 in the June 21, 1989 Congressional Record, (page S 7104) stated that, "Today program-length commercials have diminished in number . . . " (emphasis added).

Question: Are these programs harmful to children? In what way?

Response: Programs that are simply disguised ads could be harmful to children. Disguising ads as programming can be utilized to deceive children in regard to a specific product's properties, attributes or functioning. A.N.A. simply opposes all false or deceptive advertising to children or adults in whatever format it may occur.

Some critics of children's programming, however, assume erroneously that any program that features or contains a character that might "relate" to a product is therefore an ad. This view is simplistic and false. Programs as diverse as the "Peanuts" and "Garfield" specials, "Winnie the Pooh," "Pee Wee's Playhouse," "Duck Tails," and a myriad of other children's programs depict characters which are also represented as toys and numerous other products. To call these programs, on this basis, ads would make a total mockery of the legitimate and long-standing distinctions between commercial and noncommercial speech.

A recent example helps to illustrate this point. "Thundercats," a children's television program, was launched while some of the characters depicted on the show were contemporaneously represented as toys and sold in stores. Did "Thundercats" thereby become a thirty-minute ad? The answer is an unequivocal no. "Thundercats" proved to be a highly successful show. The "Thundercats" toys failed to sell and were discontinued while the program remained on the air. Clearly, the show had a life of its own totally separate from any toys based on the "Thundercats" characters. Therefore, to treat these types of programs as ads would be unconstitutional.

SUNY v. Fox states that "commercial speech" must consist of speech that "proposes a commercial transaction." The mere depiction of a character on children's programs does not "propose a commercial transaction" or even alert kids to the existence of toys in any store.

A.N.A. believes that to protect the public and in particular children from so-called "program-length commercials" requires a careful analysis of each specific program. In light of the important constitutional issues involved, no simple, infallible governmentally constructed litmus test can be developed to make this important determination on an across-the-board basis. Therefore, legislation such as S. 1215, which attempts drastically to oversimplify this complex subject, should be rejected by the Congress.

Question: Could "Sesame Street" be considered a "program-length commercial?"

Response: If the Senate Commerce Committee accepts the provisions of S. 1215, the answer is clearly yes. The definition of "commercial matter" contained in S. 1215 applies to any broadcast licensee. Therefore, "Sesame Street" and a host of other exemplary children's programs aired on public broadcast stations would be covered by S. 1215.

A recent article in the July 31, 1989 U.S. News and World Report, (pp. 50 and 55) (Attachment No. 2) notes that in 1988 "Sesame Street" "reaped $55.7 million [illegible] products, home videos, magazine sales, software, [illegible] international television." (emphasis added). Advertising Age (Attachment No. 3) also announced that Britannica Home Library Service

will "introduce the first catalog dedicated to 'Sesame Street' products." The article stated that the "48-page catalog" would include "about 300 products from toys and games to books and home furnishings . . . " Advertising Age reported that the catalog was to be sent out to "millions of parents of children up to age 6 considered 'Sesame Street's' target audience."

The merchandising of these "Sesame Street" products obviously makes a major contribution to the budget of the program's producer (Children's Television Workshop). As a consequence, stations are able to secure rights to this highly-acclaimed series at a substantial "discount" when compared with the licensing charges that would otherwise be required to cover production costs. Of course, this is precisely the kind of merchandising/discounting arrangement that S. 1215 seeks to preclude. While some might favor a statutory exemption to deal with this "Sesame Street" problem, there would be no principled basis under the First Amendment for a statutory distinction purporting to separate "good" shows with discounts from "bad" shows with discounts. Indeed, the very act of creating such an exemption would underscore the unconstitutionality of the bill by making it absolutely clear that the government does not have a substantial interest in precluding merchandising/discounting practices. Moreover, any special exemption that applied only to public broadcasting could create the absurd result that "non-commercial" stations would be permitted to carry so-called "program length commercials" that were otherwise branded as abusive commercial practices. Clearly, such a discriminatory classification would be blatantly unconstitutional.

Question: Will this provision result in a decrease in some programs that are considered good or that promote pro-social behavior?

Response: S. 1215's provisions focus primarily on whether a children's program has been provided to a broadcast licensee at a discount or in exchange for some other "valuable consideration." Therefore, unless no "good" or "pro-social" children's program could ever be offered on a discounted basis, an assertion which A.N.A. believes on its face is absurd, this provision is likely to result in a decrease in useful and entertaining programming for children.

In fact, A.N.A. believes that, taken to its logical conclusion, S. 1215 can nullify or seriously curtail the effectiveness of S. 797, the "National Endowment for Children's Educational Television Act of 1989," recently approved by the Senate. The intent of S. 797 is to provide a funding mechanism for producing educational programming for children. However, because S. 797 would require the Secretary of Commerce to insure that the programs funded under S. 797 must be provided at a "charge" that "will assure maximum practicable distribution," it is likely that the Secretary would have to sell the programs at discounted rates. Therefore, in conforming with the directives of S. 797, the Secretary may very well transform, albeit involuntarily, the programs developed under S. 797 into "commercial matter" subject to the time limit restrictions proposed in S. 1215. This would force private broadcast licensees either to reject the programs developed under S. 797 or to force these broadcasters to be in violation of the time limit provisions of S. 1215. Clearly this would contravene the purposes of S. 797.

Question: What will it cost television stations and the FCC to enforce this provision?

Response: A great deal. As articulated in testimony provided by the National Association of Broadcasters, S. 1215 effectively would require program providers and stations to make available to the government detailed accounts and records of their financial dealings. The government would then have to review each contested program to determine whether or not the program was provided to the station at a discount or in exchange for some other valuable consideration and whether the barter arrangement represented the fair market value of the programming. Who will review these records? Who will make these determinations? Who will pay for this process?

However these questions are answered, it is almost inevitable that they will impose substantial costs and burdens on the broadcasters and the federal government. The broadcasters could well pass on these costs to advertisers through increased charges for advertising, which eventually and inevitably would be passed on to consumers.

Senator INOUYE. Thank you very much, Mr. Helm.
Dr. Kunkle.

STATEMENT OF DALE KUNKLE, ASSISTANT PROFESSOR, DEPARTMENT OF TELECOMMUNICATIONS, INDIANA UNIVERSITY

Dr. KUNKLE. Good morning, Mr. Chairman.

I appreciate the opportunity very much to testify today on behalf of the American Psychological Association. My name is Dale Kunkle.

The recent actions of this Subcommittee and the Congress as a whole, demonstrate the conviction that a new regulatory policy is needed to improve the many shortcomings in children's television. What is at issue today is what is the best way to do so.

For television, the most fundamental aspect of serving the child audience involves providing program content that is educational or informational in nature. As you have noted, in 1974, the FCC first enacted policy guidelines—not requirements that demanded absolute compliance, but a policy request or a policy guideline that the FCC would review broadcasters' service to children in providing educational and information programs.

In 1979, the Commission staff evaluated broadcasters' performances after five years. The conclusion of that report was unequivocal: broadcasters had not complied with those provisions. Rather than move to enforce its policy, however, the FCC chose instead to deregulate broadcasters' obligation to provide educational/informational programming for children.

The Commission held that the availability of children's content via alternative means, such as cable television or video cassettes, rendered service from broadcasters no longer essential to the public interest if that other material was available.

I would like to call this the FCC's "Disneyland Rule." And I would like to explain why. The same logic that the Commission employed in deregulating children's television could be applied, for example, in Anaheim, California, to determine that public parks are no longer necessary because Disneyland is available nearby. Since children's needs for open space and recreation could be met by this alternative, the public interest would no longer require that we maintain parks.

Of course, the fundamental flaw in this logic is that Disneyland charges a price for admission—a price that not all can afford to pay.

I hope the parallel being drawn here is an obvious one. The FCC has ruled that the availability of children's programming via sources that require direct payment, subscribing to cable or obtaining video cassettes, that that availability reduces the needs of broadcasters to serve the child audience. That is a policy that only serves a part of the public, those who can afford the non-broadcast alternatives.

It says the needs of children from families who must rely on broadcast television do not matter. And it is worth noting that many families in this country rely solely on broadcast television, not simply because of financial considerations, but also because

they live in remote areas of the country that will never be wired for cable, or do not have local videotape sales and rentals.

What I have just described is the current policy in this country for providing children's television. It is clearly a flawed policy that may serve the privileged well, but the underprivileged not at all.

Both of the measures the subcommittee is now considering, S. 707 and S. 1215, are designed to increase the children's educational content provided by broadcasters. Which would be more effective? That is the question that you face.

The answer to the question, I believe, is not a rather complex one, and requires taking only one basic factor into account. That factor is the axiom that children's programming, by definition, establishing a narrow aspect of the audience as its target, is not at all among the more profitable program types a broadcaster can provide.

That axiom explains why broadcasters failed to comply with the former FCC policy that was quite clear in stating: We want you to serve the educational/informational needs of children. Those programs did not generate big enough profits to compete in the marketplace, and there were no sanctions at that time for a station's failure to comply.

The axiom also explains why the relatively small amount of educational children's programs that have been provided by broadcasters in the early 1980s have now disappeared entirely from the airwaves.

On this point, research is clear. One study from the University of Kansas documents a significant decline in children's educational programming at roughly the same time that the FCC made clear its intention to deregulate the programming requirements for children.

Another study at the University of Illinois indicates that commercial broadcasters failed to provide a single educational program for children in a medium-sized midwestern city.

A third study from the University of Southern California documents the same finding in the much larger Los Angeles market. Here the inescapable conclusion is that when broadcasters are given the freedom to choose, they consistently decide not to provide educational programs for children.

So the answer to the question, "Which bill will be more effective?" must be addressed, taking into account the clear pattern of broadcasters' past performance. It would be naive to expect that stations will deliver any more than is absolutely necessary in the way of educational children's programming. To do so would conflict with their own economic interests.

S. 707 would require stations to serve the needs of children through "their overall programming." It seems obvious to me that this criterion could be met without the provision of any educational programming specifically designed for children. As has been noted already today, stations can claim that many of their family-oriented prime time programs provide messages of value to youth. And there is some merit in that claim. But if your goal, if the goal of this subcommittee is to establish a policy to stimulate educational programming that is uniquely tailored to have a positive impact on the child audience, to help them learn, to help them appreciate his-

tory, to help them learn about our society and our culture, then precedent suggests the only way to get that is to spell out this requirement very clearly.

S. 1215 does just that. It stipulates an obligation to provide content specifically designed to educate and inform child viewers, thereby leaving no room for confusion about what is required. Programs intended for general audiences would not suffice under S. 1215, although they certainly would be subject to the consideration of the FCC in evaluating broadcasters' service to the child audience.

But most importantly, by ensuring the delivery of programming specifically designed for children, the Senate can move to maximize the positive impact of the content that will be provided.

That is because children differ tremendously from adults in their thinking and reasoning capacities. While very young children can make some sense of almost any television content, it is not until the middle elementary school years that they become capable of what one might term mature comprehension. Until that age, young viewers might observe a pro-social action in a television program, but be unable to link it in any sort of cause-and-effect relationship with an outcome that was shown in a much later subsequent scene.

That means that many portrayals that have value for older viewers that may, in fact, be educational for older children or for adults may not be fully understood by young children. This fundamental difference in the cognitive abilities both between adults and children and older and younger children is an important distinction that needs to be appreciated by those who purport to provide the programming that will be of benefit to children.

S. 1215 is clear in requiring programming specifically designed for the child audience whereas S. 707 allows the needs to be served by general audience programming. S.1215 also requires programs specifically designed for two primary age groups of children who have differing levels of cognitive abilities while S. 707 fails to address this concern.

Both of these features of S. 1215 would enhance tremendously the positive impacts of the programming required for children. Thus, it is my opinion and that of the American Psychological Association that S. 1215 is the preferred measure, and we endorse it enthusiastically.

There are three other aspects of S. 1215 that also offer important improvements over and above that of S. 707. One is a more stringent restriction on children's advertising which is important given young children's inherent susceptibility to commercial persuasion. Another is a restriction on children's program length commercials and a third is a provision for sharing information with the public about the educational programs broadcasters provide for children. As that information must be reported to the FCC by broadcasters under either bill, I think it only makes good sense to share it with the public who, as Senator Wirth has noted earlier, can use that to their advantage to guide their children's viewing to programming that does have educational or informational value.

To conclude, children's interest have been consistently overlooked by the broadcast industry as well as by public policymakers. It is an irony that the greatest amount of children's programming

in the history of the medium was provided during television's infancy in the early 1950s. At that time broadcasters presented children's programs as an incentive for families to purchase television sets, thereby increasing their potential audience of adults.

Once television set ownership exceeded 90 percent of the population, that was around the early 1960s—children's programming began to decline. That decline continued throughout the 1970s and was accelerated by the FCC deregulation in the 1980s.

This country desperately needs a strong policy that ensures the benefits of a valuable public resource, the broadcast airwaves are shared with America's children. Given the history of broadcasters' past performance, I am convinced the only way to accomplish this is through a firm and precise requirement for educational children's programming such as that incorporated in S. 1215.

To enact less legislation that is less demanding leaves room for stations to continue the practice of choosing their own economic interests over the interests of children. That has been the consistent practice through the history of American television.

It baffles me how anyone can seriously claim that a "new children's programming requirement" will accomplish anything when it allows the current broadcast practices to meet that so-called new obligation.

Thank you very much.

Senator INOUYE. Thank you very much, Doctor.

Mrs. Robinson.

STATEMENT OF SHARON ROBINSON, DIRECTOR, INSTRUCTION AND PROFESSIONAL DEVELOPMENT, NATIONAL EDUCATION ASSOCIATION, WASHINGTON, DC

Mrs. ROBINSON. Mr. Chairman, members of the subcommittee, I appreciate this opportunity to testify on behalf of the National Education Association. I am Sharon Robinson. I direct the unit on instruction and professional development for the NEA.

The advent of television marked a revolution in our society, but its great promise and potential has always eluded us. But today, in this age of reform, we must capture every available resource that holds any promise to assist us in educating our children.

Indeed, while television has the potential for great good, it also has the potential for harm. From the very beginning Congress recognized this two-edged sword and established the means of regulating television while respecting the principles of the First Amendment.

NEA believes that Senator Wirth's bill, the Children's Television Education Act, S. 1215, would be an important contribution to making this powerful medium live up to its full potential.

In addition, we support the Chairman's bill, the Children's Television Endowment Act. Though it would have an impact on public television, we believe this bill would provide an additional means of enhancing available educational opportunities for our children through television.

Nothing in these bills would prevent persons involved in the television industry from fully exercising their First Amendment rights.

NEA has worked for many years to promote quality children's television. We have testified before Congress. We have worked with the Federal Communications Commission, we have worked directly with the television industry, broadcasters, writers, producers, and directors to encourage excellence in children's television.

Recently the NEA formed a partnership with The Discovery Channel to develop programs that can be used in the nation's classrooms. We can cite several examples of programs that do enhance the learning process, but the overall record of the television industry, particularly since broad deregulation in 1984, has been and continues to be abysmal.

Broadcast representatives argue that market forces ensure quality and guard against oversaturation of advertising, but the experiment of deregulation has proved these arguments to be false. Instructional or informational programming has dwindled to about one hour per month, and advertising directed at children has been pushed to the point where advertising and program content are virtually indistinguishable.

One should not be surprised. After all, advertisers, not viewers, control the marketplace. The viewers are merely a commodity sold to advertisers. When market-based arguments fail, broadcast representatives appeal to the free speech issues. These arguments ignore the contract expressed in section 309(a) of the Communications Act of 1934.

The broadcast airwaves belong to the American public, and broadcasters can use these airwaves in return for providing a service that is in the public interest. The FCC has declared broadcasters were not fulfilling their public interest responsibilities, but in 1984 the FCC declared that broadcasters simply did not have to.

If broadcasters will not fulfill their obligation and if the FCC will not exercise its authority to enforce that obligation, then Congress simply must act, establish a new contract and take steps to enforce it.

When at last free market and free speech arguments fail to hold, broadcast representatives argue that children should not watch as much television as they do. While we agree that many American children do watch too much television, we cannot set limits on how much television children watch. That is the responsibility of parents.

We can, however, ensure that children have opportunities to watch programs that are both entertaining and instructive. We do not fear that if too much quality children's programming is produced America's youth will be drawn away from other worthwhile pursuits.

Six years ago I testified before a joint Congressional hearing on some of the very issues we are discussing today, and I must say to you that the situation, far from getting better, has gotten worse.

Without question, television has an impact on young children, and the time has come for Congress to take steps to assure that that impact is a most positive one.

Legislation that addresses some of these matters was passed overwhelmingly by the 100th Congress.

Senator Wirth's measure would build on that legislation, and we urge this committee to take swift action on the Children's Television Education Act.

Thank you very much.

[The statement follows:]

STATEMENT OF THE NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am Sharon Robinson, director of Instruction and Professional Development for the 1.9 million-member National Education Association, which represents professional and support employees in public elementary, secondary, vocational, and postsecondary schools throughout the nation. I appreciate this opportunity to speak about standards for children's television.

NEA strongly supports the Children's Television Education Act, S. 1215, sponsored by Senators Wirth, Metzenbaum, and Lautenberg. This measure deserves the support of this Committee and of Congress. It would be an important step in efforts to use the medium of television to promote our nation's educational goals. At the same time, this proposed legislation would protect children from exploitation by advertisers and the manufacturers they represent.

Provisions of S. 1215

The Children's Television Education Act would require each station's license application to be evaluated according to its service to the child audience. To meet these licensing requirements, each station would need to provide educational programming specifically designed for children. In setting forth the licensing criteria for broadcasters, this legislation makes an important distinction. Where H.R. 1677 would require broadcasters to include programs of interest to children, S. 1215 would require broadcasters to include educational programs

specifically designed for children. Instructional and informational programming for children must be age-appropriate.

Once these programs are established, the Act would require public notice of educational children's programs. The intent of this provision is to indicate clearly to children, parents, and educators which programs are designed to meet the requirement to produce and air instructional and informative programs for children. The mechanism to accomplish this — through a symbol that could be displayed in program listings and promotions, for example — would be left up to broadcasters.

In addition, the Act would limit the time dedicated to advertising during children's programs to no more than nine and one-half minutes per hour during weekends and 12 minutes per hour on weekdays, as previously required by the Federal Communications Commission. We believe these limits represent a reasonable compromise between the bottom line demands on television stations and the protection of children against exploitation by TV's pitchmasters. These limits, established by the FCC in 1974 and abolished in 1984, clearly should be reinstated. Since 1984, broadcasters have taken advantage of this freedom to saturate programs aired while children are most likely to watch with advertising and other non-program content.

Consistent with limiting the ratio between advertising and program content, the Act would put an end to program-length commercials that have proliferated over the past few years. The measure would, appropriately, apply the definition of commercial content contained in Section 317 of the Communications Act of

1934 to product-related programs. Programs that are developed for the primary purpose of promoting toys or other products and are aired by broadcasters in consideration for a portion of the profits from sales of related toys or in exchange for advertising space on other programs, are, in fact, advertisements. And they would be subject to the time limits on advertising that the Act would establish.

NEA believes that all of these provisions address key concerns that we and other children's advocates have about current practices in the commercial television industry. At the same time, we believe that the needs of children would be best served by both public and private efforts. NEA, therefore, also strongly supports S. 797, authored by Chairman Inouye and reported by this Committee. This bill would authorize a $10 million endowment to support the development and production of instructional and informational programs designed for children and aired on public television stations. We applaud the Chairman's efforts on behalf of a measure that would complement this Committee's work on S. 1215.

Television's promise and present realities

The advent of television held the promise of great opportunities for learning for both young and old. While television is normally considered a form of entertainment, it is a tremendous font of information as well. For many Americans, television has replaced newspapers and radio as the primary source of news. It has given us immediate access to the images,

the colors, the sounds of remote parts of the globe. Television provides us insight in the varied lives of individuals and cultures. Whole new worlds, from the far reaches of space to the processes of a cell can be not just explained, but vividly shown. From the fundamental elements of learning — the alphabet and numbers — to the most complex philosophical and scientific ideas, television gives access to knowledge beyond the most ambitious dreams of our forebearers.

Like any powerful force, television has the potential for great good and great harm. From the beginning, Congress recognized this two-edged sword and established a means of regulating television while respecting the principles of the First Amendment. Toward this end, laws regulating television tend to rely on the carrot, rather than the stick; they are intended to guide, rather than control.

In the same way, NEA's involvement with television broadcasters, writers, producers, directors, and others responsible for program content has been geared toward encouraging and recognizing excellence. We supported the Educational Television Act of 1962, and each year since we have supported congressional appropriations to support activities under the Act. NEA has long developed materials urging parents to take an active role in their children's television viewing habits. We have, for many years, reviewed and recommended television programs for children to encourage television programming that is both entertaining and instructive. And

earlier this month, NEA presented our eighth annual NEA Broadcast Awards to acknowledge and promote quality children's programming.

Recently, NEA formed a partnership with the Discovery Channel to bring more educational television programs to the nation's classrooms. Starting September 18, the network will offer a one-hour educational program, "Assignment: Discovery," every weekday at 9 a.m. Each program will feature two 20- to 25-minute segments on one of five major subjects: science and technology, social sciences, arts and humanities, natural sciences, and world events. In addition, NEA will cosponsor two major documentaries with Discovery, including one on China.

We can cite other examples of programs that enhance the learning process. But overall, the record of the television industry's commitment to quality programming for young children is abysmal. The fact that the Public Broadcasting System exists to promote learning for children, youth, and adults does not absolve other broadcast or cable producers and programmers of the moral and civic obligation to be responsible in the use of the tremendous power they hold. We do not suggest that television can replace all other means of conveying information and transmitting ideas that are fundamental to the education process. But television executives must acknowledge that they do have an impact on the education of young children, and they must take steps to make that impact a positive one.

The public trust and the public interest

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Concern about television and the public interest is nothing new. The Federal Communications Commission established standards for commercial broadcasting as early as 1934. By 1960, the FCC included a requirement for programming designed for children as part of its standards for meeting the public interest obligation of broadcasters. However, over the past three decades, the lax enforcement of these few standards deteriorated, culminating in the broad deregulation of television by the FCC in 1984. Since that time, the broadcast industry — far from demonstrating a good faith effort to address the need for quality children's programming — has demonstrated an utter lack of regard for the public interest.

The arguments of the broadcast industry have followed a slippery track. Broadcast representatives first argue that the marketplace will solve any concerns over quality and will prevent against oversaturation of advertising. But the experiment of deregulation has proven these arguments to be false. The few network television programs devoted to instructional or informational programming have gone out of production. Programming that can be characterized as instructional or informational has dwindled to about one hour per month. One shouldn't be surprised that when market forces rule supreme, the needs of children, who have no economic power, will not be well served. After all, the market for broadcasters is not to sell programs to viewers, but to sell viewers to advertisers. In this environment, advertisers control the marketplace, not viewers and certainly not children.

In the same way, market forces have not been effective in preventing oversaturation of advertising. Current practices certainly test the limits of advertising saturation. But research shows that children — with more limited powers of discrimination — are less likely to shut out or shut off advertisements, especially when advertisers spend as much as or more on a 30-second commercial than they do on a 25-minute program.

When market-based arguments fail, broadcast representatives appeal to free speech rights. But for many years, the courts have upheld legal distinctions between commercial speech and political speech, and between print and broadcast media. Section 309(a) of the Communications Act of 1934 provides that broadcast airwaves belong to the American public. Broadcasters can have "free and exclusive use" of such airwaves for a fixed period of time, but in return they are required to serve in the "public interest." In 1960, the FCC declared that broadcasters were not fulfilling their public interest responsibilities. It set out 14 categories of programming necessary to meet that obligation, including programming specifically designed for children. The Children's Television Education Act would allow broadcasters, producers, writers, and others ample room to exercise their free speech rights; at the same time, it would require them to fulfill their part of a contract specified in the Communications Act of 1934: free use of the airwaves in exchange for serving the public interest. The courts have upheld other restrictions on broadcasters consistent with this contract, including

prohibitions against obscenity and indecent programming and against cigarette and liquor advertisements. Ample precedents exist for agency and/or Congressional action on these matters consistent with First Amendment protections.

When, at last, free market and free speech arguments fail to hold, broadcast representatives argue that children should not watch as much television as they do. While we can agree that many American children do watch too much television, it is not up to us, as teachers, or to you, as lawmakers, to set absolute limits on how much television children should watch. That is primarily the responsibility of parents. However, we can take steps to ensure that children do have opportunities to be exposed to programs that are both entertaining and instructive.

Studies show that television can play a helpful role in learning, particularly in expanding vocabulary for young children. At the same time, especially for school-aged children, there is an adverse relation between too much exposure to television and academic achievement. However, we do not share the fear of the television industry that if too much quality children's programming is produced, America's young people will be drawn away from other worthwhile pursuits such as athletics, reading, and other extracurricular activities. We ask of Congress, and of the television industry, to work within present realities and provide positive alternatives at times when children do watch television.

NEA has testified before Congressional hearings several times in an effort to bring attention to the problems and

potential of television. Six years ago, I testified before a joint hearing of the House Elementary, Secondary, and Vocational Education Subcommittee and the Telecommunications, Consumer Protection, and Finance Subcommittee on some of the issues we have discussed today. And I can tell you that the situation, far from getting better, has gotten worse. However, we sense that the time for action is at hand. Legislation that dealt with some of these matters — limits on advertising and requirements to consider a station's practices in the area of informational and educational programming — was passed overwhelmingly by the 100th Congress.

S. 1215 has the strong support of NEA, PTA, the American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychological Association, Consumer Federation of American, National Association for Better Broadcasting, and others. This measure builds on H.R. 3966 which passed last year, and we urge you to take swift action on the Children's Television Education Act.

Thank you.

Senator INOUYE. Thank you very much, Mrs. Robinson.
Dr. Palumbo.

STATEMENT OF DR. FRANCIS PALUMBO, AMERICAN ACADEMY OF PEDIATRICS, WASHINGTON, DC

Dr. PALUMBO. Good morning, Mr. Chairman. My name is Francis Palumbo, and I am a practicing pediatrician here in town at Georgetown University. Thank you for the opportunity to address the committee on behalf of the American Academy of Pediatrics.

The academy represents over 38,000 pediatricians in the United States who care for and advocate for the health and well-being of infants, children, and adolescents, and I appreciate the opportunity to appear before you today to discuss this most important legislation.

The academy believes that the Federal Communications Commission has failed to adequately regulate children's television. Congress should prompt the FCC to act appropriately and responsibly. As children's television programming offers very little in the way of quality programming, we believe that strong legislative measures are necessary to improve the situation.

The legislation offered by Senator Wirth's bill, S. 1215, the Children's Television Education Act, best embodies the legislative rem-

edies necessary to provide suitable educational and instructional programming for the nation's children.

From a developmental perspective, I agree with my colleague from the APA. It is almost folly to consider the needs of the child as part of the greater needs of the adult or family viewing audience. The preschool child and the school child are clearly different than an adult and clearly different than a young adult or even an older school age child.

It is clearly inappropriate, then, to consider that the programming needs of the preschool and school age child must be met.

Pediatricians believe that next to the family, television is probably the most important source of information for children. Since children spend more time watching television than they spend in the classroom, television is obviously a major influence in their development.

Television has enormous power to educate children and, as we all know, children learn from what they see and hear. Therefore, we are concerned about the time children spend watching television, what they watch, and therefore what they learn.

We abhor program length commercials and the virtual absence of suitable educational and instructional programs for children on commercial television. The lack of appropriate programs for our children relegates them to watching programs tailored to adult tastes—programs that often consist of violence, sexually explicit behavior, or alcohol or drug use—which obviously do not convey the kinds of values we wish our children to learn.

Television is a powerful tool that can promote learning, create aspirations and induce pro-social behavior. However, television advertising and programming can obviously adversely affect the learning and behavior of children. The Academy has stated very clearly that we are concerned about the excessive use of violence, the use of alcohol on television, the portrayal of sex roles and sexuality, the portrayal of ethnic and racial stereotypes and the unrealistic view of problem solving or conflict resolution.

Unfortunately, most of the programs available to children consist of program length commercials which are created and paid for in many cases by the toy industry to market their products. Toys are featured as the main characters. Almost all of the 20 best selling toys in the market are based on television programs. Whereas, formerly, 30-second commercials were used to advertise toys, now 30–60 minute program length commercials advertise toys. This includes the commercials for the toys aired during the program.

More than half of the programs have violent themes, often glorifying war and failing to educate our children. The Academy believes that the use of television programming as a billboard to advertise toys to children is not in the best interests of children.

Furthermore, virtually no alternative choices are available on commercial networks for parents who wish to use television to enrich and educate their children. Nowhere else in television would an audience be exploited in such a fashion.

I cannot imagine a program sponsored by General Electric that consisted solely of products used by GE, with someone saying, "I am going to go to my GE refrigerator to get a glass of milk," or, "Let us turn on our GE air conditioner," or, "Gosh, are not these

GE light bulbs very bright and illuminating us very nicely?" I do not think the adult population would stand for something like that, and yet that is exactly what we have with these program length commercials.

For parents the only current alternatives are either to allow their children to watch television and be exposed to situations that are not in their best interests or to turn the television off. The Academy firmly believes that another more positive alternative must be developed. Parents must have available program options that enrich the lives of their children.

From landmark studies concerning behavioral effects of television on children summarized by the NIMH study in 1982, we know that children learn and form attitudes from what they see on television. The inability of children to distinguish between commercial and program content led the Federal Trade Commission to require a break between cartoons and commercials. This decision recognized that young children have difficulty distinguishing fantasy from reality.

Therefore, we believe that children's programs are desperately in need of oversight and revision. In fact, one might even argue that advertisements to young children almost by definition should be considered deceptive and unfair.

Another concern of the Academy has been the violence that is seen and promoted in these program length commercials. Many of these are about war. Our child sees Rambo or GI Joe as heroes conquering evil. Unfortunately, the maimed children, destroyed villages, famine and disease that result from war are never shown.

The average child sees over 12,000 acts of violence on television annually, the majority of which are on these program length commercials. We believe that television violence has a clear and reproducible effect on the behavior of children and that televised violence contributes to the climate in which we live, the frequency with which violence is used to resolve conflict and the passivity with which violence is perceived.

In addition to the lack of educational programs for children, an issue for responsible parents is the lack of nonviolent programming alternatives.

In most other countries, the content of programming for children is carefully designed to limit their exposure to themes felt to have an adverse effect on development. Incongruous as it may seem, children's television programs in the United States are based on commercial benefits to the sponsors rather than the developmental benefits for children. Australia, Japan and Great Britain offer up to six hours of instructional programming each day. In the United States our commercial networks may offer one hour per week or a month.

Broadcasters should not be allowed to take advantage of our children through commercial efforts. They should be contributing programming that will help give children the best educational foundation possible to promote happy and successful lives.

Because the FCC has failed to adequately regulate television programming, the Academy believes congressional action is warranted. We have heard about the marketplace and the value of letting the marketplace decide. Well, I have a 15-year-old son who prob-

ably has enough money to buy a gun and maybe a car. Should the marketplace then come to bear that he should be allowed to do that or is he somehow protected from his own designs under the law and not allowed to purchase that car or that gun? Children are clearly different and need special protections.

Parents need your help. It is correct that the major responsibility for television viewing rests with parents who must control the amount of time their children spend in front of the television set. However, as Senator Wirth said earlier, there are many, many parents in this country who are single. There are many families where both parents are working. They clearly need help. Children watch a lot of television, sometimes unfortunately because the Television is used as a baby-sitter. But if you are a single parent and working all day long and tired at the end of the day, it is often hard not to use the television as a baby-sitter.

It seems to me it is the responsibility of the broadcasters—since the airwaves are public and need to be used in the public interest—to supply parents with educational and informative programming alternatives.

We have heard a bit about cable and VCR. Well, the way I would look at that would be to understand that cable costs money. VCRs cost money. Let me make a comparison. It would be like saying that if programming is good on cable and if there were good videos, then because the private schools in a certain area are adequate, why do we need to develop the public schools? If someone can afford it, they can go to private schools. The public schools do not have to be that good.

I think this is the same thing here. The airways are public. They should be used to serve the public interest. Just because cable may produce a good show does not relieve the responsibility of the broadcasting industry.

We have also heard a little bit about the First Amendment. I mentioned a bit earlier about my son and a gun. I think a retailer has a right to sell a gun. There is a constitutional right in this country to bear arms, but is it right for my son to go in and purchase a gun at age 15 or when he was 10? No, of course not. Children are special under the law. They are protected under the law. So, if we need to do something similar with a medium that can be harmful to children, I do not see that as any infringement on the constitutional rights of the broadcasters. In fact, it protects the constitutional rights and the health of children.

The responsibilities of broadcasters are clearly delineated by the public interest standard, which offers them a license in return for broadcasting in the public interest. The Academy contends that current children's television programming is not in the public interest. We, therefore, commend you, Mr. Chairman, for holding this hearing and for your efforts on behalf of children. We look forward to working with you to develop an appropriate remedy for this problem. Thank you.

Senator INOUYE. Thank you very much, Dr. Palumbo.

I would like to now call upon Senator Exon, who has to report to the Armed Services Committee immediately.

Senator EXON. Mr. Chairman, thank you very much. I am going to be very brief, but let me make a statement first. I have been in-

volved with you, Mr. Chairman, and the members of this committee for a long, long time, and I see sitting out there today people that we have worked with over the years on these problems.

My question basically goes to Mr. Fritts and Mr. Helm. Mr. Fritts and Mr. Helm, I think what you are hearing today, I think what the two measures introduced by Senator Metzenbaum and Senator Wirth are simply a forerunner of other things that are very likely to happen.

I am not trying to blame anybody because there were concerns that many of us had when we deregulated the broadcasting industry. I do not remember which witness it was that said that we were pretty much assured at that time that competition would take care of everything. I think it has not. I must tell you, Mr. Fritts, and I must tell you, Mr. Helm, that I think it has not.

As a parent and a grandfather of eight, my children are beyond the point where television affects them one way or the other, but the eight grandchildren are not. I am not blaming you for any of these things, but I am wondering what goes through the minds of the broadcasting industry today and their leadership and what goes through the minds of the advertisers and their leadership.

When we hear the statements that we hear from these witnesses today from the professional areas that are very much concerned about the quality of television advertising and programming, and I say "quality"—that is arguable.

I do not think that we are out to get the television industry. I recognize and I agree that it is a public media. That is why we have licenses. I do not want to put the broadcasting media in straight jackets, but if I might, could you each give me a brief response as to whether or not you think any of the criticisms that have been voiced here today, any of the criticisms that the Metzenbaum and the Wirth bill at least are trying to correct—is there any validity to the concerns that four members of the panel this morning and Senator Metzenbaum and Senator Wirth and at least this Senator among others have about what the kids are seeing today, and what do you think the responsibilities of the broadcasting industry that you are a part of and you as an advertiser are part of? Is there any concern here at all or is this just a pipe dream that people are having?

Mr. FRITTS. Senator, I will take the first crack at that.

Number one, as you recall, S. 707 is identical to the legislation which was passed last year with our acceptance as a broadcast industry, and we are willing to stay in that same posture in the future.

But, let me comment a little further if I might. There has been a lot of discussion here. Apparently I am not in the same galaxy with some of our other witnesses today because there are good things happening on local commercial television around the country that our witnesses apparently are not familiar, with.

For instance, the NAB has a Service to Children Television Idea book which just gives highlights of a number of local stations around the country and how they, in fact, do work toward the educational and informational needs of our children.

Senator Wirth said that not one program dealt with that, and I beg to differ with him because we have a whole book full of them. I will give you a couple of examples.

Senator EXON. Let me interrupt you. I have seen when I am sitting there watching what my grandkids are watching some programs, you know, a program that I think is terrible. Senator Inouye might think it is great, so it is a matter of individual choice, but I have seen some programs that have been broadcast by some of the locals that I think are pretty good, so I would not say that there are none.

Let me ask you this question. Do you think there are more or less "good" programs produced by the locals since deregulation?

Mr. FRITTS. I think that is a subjective question in terms of good programs. As you mentioned, the taste of your children would vary as they would with anyone.

I think it is incumbent upon an industry, if you will, to effectuate better children's programming, and that is what we have attempted to do. We have instituted Family Viewing Month, for instance, in January 1989. We ran a theme, a campaign across the nation, "Watch What They Watch," encouraging parents to become involved with the programming that the children are watching. This is not a government-mandated program. It is something that our industry moved forward on.

NAB has a children's committee, which offers awards, a $5,000 prize for the best children's program. We have a program sponsored by the NAB, by the Mormon Church, and by the Post-Newsweek operations which make awards to stations for excellence in children's programming. So, we are doing a job, I feel, as an industry to encourage more excellence in this area. While we could always do more and we should do more and we acknowledge that, we are working and endeavoring to meet the task that is before us.

Senator EXON. Thank you, Mr. Fritts.

Mr. Helm, I have to leave, but I want to hear what you have to say as an advertiser.

Mr. HELM. Well, you ask a very good question and a very fair question, Senator. I would like to answer that question by setting aside the constitutional considerations here.

Senator EXON. Let us forget the constitutional question. I am so sick of hearing—every time anything comes up whether it is flag burning or anything else, everybody goes to the constitution. I want to talk about what is right for the kids.

Mr. HELM. Let us talk about improving the quality of programming and let us talk about false and deceptive and misleading advertising as opposed to accurate, nondeceptive advertising that is truthful.

We have no patience as advertisers with 10 seconds of deceptive or false or misleading advertising. That is why we have been a strong supporter of the Federal Trade Commission and the reauthorization of the Federal Trade Commission. We are a firm backer of the Senate version of that bill. We were up here two weeks ago testifying and urging the reauthorization of a strong Federal Trade Commission.

We have been a backer and a supporter of CARU and of the NAD/NARB process to eliminate false, misleading, deceptive advertising.

Now, I have not heard a single witness here today suggest, and I have not seen any empirical evidence anywhere, that nondeceptive, accurate, truthful advertising is harmful to children. I have not heard that argument advanced here this morning at all and I am not aware that any such arguments exist. So, I think it is very important for us to distinguish what we are talking about.

Along that same line of thinking there is no indication that children are what I would call dose-sensitive to advertising. Arbitrary time restrictions are not going to do anything to improve children's perception of what they see on television. Twelve minutes to eight minutes to five minutes, there is no evidence of dose sensitivity here.

Now, let us come at your question slightly differently. If we begin to restrict the amount of advertising that is available that is truthful, accurate, honest advertising, that restricts the revenue base. Programming costs in the last three years for 30 minutes of programming, according to information that Mr. Fritts' organization has released have gone up from $80,000 to $220,000.

Senator EXON. And why is that, Mr. Helm?

Mr. HELM. That is cost escalation in the economy.

Senator EXON. No, that is not.

Mr. HELM. Well, I do not have the answer.

Senator EXON. Let me tell you what I think the answer is. I think the answer is that especially in television there has been this boom where people paid far more—I think Mr. Fritts might even agree with that—than a station was worth and, therefore, to get a return on their investment, to get their capital back and make some kind of a return, they have raised the rates.

Mr. HELM. I am not talking about the rate that advertisers pay. I am talking about the cost of producing the program itself has gone from $80,000 to $220,000.

Senator EXON. And that has raised the rates.

Mr. HELM. Not only has it raised the rates, but if those rates have to be spread across fewer commercials, then the rates for the commercials are going to continue to escalate, and the net result is that the quality of programming rather than being improved is going to be diminished.

Senator EXON. I tend to agree with you on that. I think that with the situation that we have today with many stations having invested far more than they can get from a proper return that if we overrestrict or maybe have any restriction at all, we are going to have the advertisers paying whatever they have to pay, and we might end up with the worst of all ads rather than the best.

Mr. HELM. May I have just 30 more seconds?

I think there are some things that we should continue to be doing. We have a good track record with CARU. I am glad that Senator Metzenbaum said here this morning that he is withholding any judgment or action on 900 numbers until he sees what the regulatory agencies may be doing.

It is my understanding that the networks do not accept advertising for 900 numbers. It is also my understanding that the FTC is

studying this matter right now, and I would encourage them to study it.

Just last week I had the opportunity to review some draft guidelines that CARU is developing. So, rather than jumping in on some of these things with intervention that may come back to bite us, I think we should continue the record that we have. We have prohibited host selling, we have eliminated bumpers, we prohibited program tie-ins with commercials, Mickey Mouse sweatshirts on Mickey Mouse programs. I think we are doing a great deal that we can be proud of as concerned citizens to improve television.

Senator EXON. Thank you, gentlemen.

Dr. KUNKEL. Senator Exon, if I may for a moment, Mr. Helm has left you, I believe, with a misimpression that needs some degree of clarification. He has mentioned today that he has heard no empirical evidence that children are vulnerable to television advertising and that they need protection from all television advertising. Rather, he states that he would be willing to restrict deceptive advertising, but other than that we need no protections.

The reason that issue has not been addressed by the witnesses today is that there have been literally hundreds of studies that have focused on this topic that have established without any question at all that young children below the age of about four to five consistently lack the ability to discriminate programs from commercials.

Moreover, young children below the age of about seven to eight years lack the cognitive skill to attribute persuasive intent to any television advertising. To them all television advertising is deceptive. In an ideal world, we would restrict all television advertising to children. But rather, what policymakers are attempting to do is to balance the interests of broadcasters who need to provide some monies, some revenues to drive children's programming to balance their interests with the interests of children who need to be exposed to the least amount of advertising possible.

Mr. HELM. That is a distortion of the facts, sir.

Mrs. CHARREN. It is not.

Senator EXON. Let me say as one who has not read all of the reports but as one who has observed youngsters below the ages of four years of age on more than one occasion my grandchildren under four years of age have stood up and asked for silence in the room when they went to a commercial. Now, adults are just the opposite. But I honestly have seen that on more than one occasion which indicates to me, Mr. Helm, that you people in the commercial business do a pretty good job because some of my grandchildren are more attracted to the commercials than the content of the programs, which I think is a rather sad commentary from my point of view.

Mrs. CHARREN. Mr. Exon, the D.C. Court of Appeals agrees with you, too, because on June 26, 1987 they said it is an incredible bureaucratic conclusion to think that the marketplace limits commercialism to children, and it remanded the case back to the FCC to go do something about it. I doubt very much if this FCC would do anything about these kinds of issues, which is why we are delighted that you are considering them here.

Senator EXON. Thank you very much. Thank you, Mr. Chairman.

Dr. PALUMBO. Mr. Chairman, I would like to make a comment on what Mr. Fritts said. I think we live in the same galaxy because we live in the same metropolitan area, and I think you should check the program guide for this area. You would find probably one program that would be considered educational on all three networks plus the two independents. That would be Pictionary.

Second, on the comment about dose, the dose concept of advertising, if that is the case, then maybe we should only have one ad per program. If it does not matter, if they are nine, ten, or 12 minutes, maybe we should only have one minute, then, if that is going to be as effective.

Senator INOUYE. Thank you all very much. I have been advised that in a few minutes all Senators will be called to the floor to participate in a vote on a very emotional issue. Therefore, I will be submitting questions to all of you, and I hope you will consider them and give us your response. But before I close, I would like to make my observations.

Senator Wirth stated, I think, rather correctly that not too long ago there were three institutions, the church, the family, and the school that had the greatest influence upon children. Today I am certain all of us will agree that TV may be the most influential institution.

Second, a few years ago and Dr. Kunkel made an observation which I think all of us should recall that some are privileged—all of us here, I believe are privileged—however, most of the people in this country are not privileged and that there is such a thing as this argument made by many, the Disneyland argument, which I think has no validity.

A few years ago the Secretary of Education submitted a report which horrified me and yet most people did not consider it important. The report stated that 52 percent of Hispanic adults were functional illiterates, 47 percent of adult blacks were functional illiterates, 17 percent of adult whites were functional illiterates, 13 percent of high school graduates with diplomas were functional illiterates.

Second, there are more TV sets in this nation than indoor plumbing and telephones. I am chairman of the Committee on Indian Affairs, and if you want to talk about unemployment, the national unemployment is 5.3 percent. Among the Indians it is 57 percent. It goes as high as 95 percent. But even in the poorest of the poor, you find a TV set.

Third, about 25 percent of the families of single parents—about 50 percent of black families are single parents, and when you add this all up, I think we should be concerned about what we are feeding not the privileged children, but the underprivileged children. They are the ones who have no parents to say do not watch that show or watch this show.

I have a son who is past that stage now and my wife stayed at home. We are one of the privileged, and she could control television, although we do not have cable because cable just got to Montgomery County. But the few channels we had we controlled, and my son had videocassettes and controlled programming. But how many of these families have parents who are sitting there telling

the child you may not watch this or you may watch this. And that is our concern.

I do not know what the answer is, but we are feeding rubbish to our children. As chairman of this subcommittee, I have set aside about two weekends a month, either Saturday or Sunday, spending 12 hours in front of that tube, watching what comes out of that tube I would ask all of you to do the same. You would be horrified.

And these so-called toll calls, I have been told by staff that there is a slight disclaimer, "Ask your parents." But how many kids are going to ask their parents whether they can use the telephone or not. Moreover, the disclaimer just flashes across.

So, let us deal with the real world here, not with the select few that can send their kids to private schools, the select few who can have three or four T.V. sets with videocassettes, but with the vast number of underprivileged in this land. If we are going to be satisfied with maintaining those statistics that I cited, then this great nation will no longer be great and we will not be able to compete in this high tech competition. We will not be able to stand up and say we are the greatest and most powerful nation.

I fear for this country. I think the time has come that we should seriously sit down and do something about children's television.

Mrs. CHARREN. Senator, you make me feel good that I spent 21 years of my life trying to get this bill through Congress.

Senator INOUYE. Any closing statements? In about two minutes we will be voting.

Mrs. CHARREN. I want to say that although I spent my time on S. 707, I hope it is obvious that if, Mr. Chairman, you can get consensus on a stronger bill, Action for Children's Television is certainly not opposed to that. We did the best we could, and if you can do better, we will certainly clap hands.

Senator INOUYE. Well, I thank all of you for spending your time with us. I would like to spend much more time. If possible, we will reconvene this again, but I have to report to the Senate for a vote, and I thank you, and I will be submitting these questions. I have three pages of them. They are very important to us. Thank you.

[Whereupon, at 11:49 a.m., the subcommittee adjourned, subject to the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON COMMUNICATIONS
U.S. SENATE

COMMENTS OF THE AMERICAN ASSOCIATION OF ADVERTISING AGENCIES ON S.707 - THE CHILDREN'S TELEVISION ACT OF 1989, AND S.1215 - THE CHILDREN'S TELEVISION EDUCATION ACT OF 1989

The American Association of Advertising Agencies, Inc. (A.A.A.A.) submits these comments in response to S.707, The Children's Television Act of 1989, and S.1215, The Children's Television Education Act of 1989, both discussed in a hearing before the Subcommittee on July 12, 1989.[1]

Regarding commercialization practices in children's television programming, the A.A.A.A. sees no need for the Federal Communications Commission to modify the regulatory policy of non-interference which has prevailed for the past several years. These comments will communicate the reasons why the A.A.A.A. believes that a fair and free market will best serve the public good.

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1 Comments substantially similar to those set forth here were submitted before the Federal Communications Commission on February 19, 1988, in response to the Further Notice of Proposed Rulemaking/Notice of Inquiry issued by the FCC on November 9, 1987. 52 Fed. Reg. 44616 (Nov. 20, 1987). The submission was made as part of the A.A.A.A.'s continuing effort to assist the Commission in formulating workable policies in the area of children's television.
The A.A.A.A. further submitted comments before the Telecommunications and Finance Subcommittee of the House of Representatives on May 1, 1989, in response to H.R. 1677, the companion legislation to S.707.

As the national organization of the advertising agency business, with over 760 member agencies placing more than 75% of all national advertising in the United States, the A.A.A.A. has long been an active participant in Commission proceedings relating to children's television.[2] Many A.A.A.A. member agencies produce advertising for their clients which informs viewers, including children, about children's products. This advertising is broadcast during children's programming. Such advertising represents an important part of the economic base that supports the national commercial television system. Any regulatory tampering with that delicate balance jeopardizes the revenues that make commercial television possible. Thus, the A.A.A.A. opposes imposition of unnecessary federal regulation such as quantitative commercial guidelines.

We are opposed to commercialization guidelines because we believe that proponents of such guidelines feel that children's advertising is inherently harmful and that children need to be protected from it. However, children did not receive such "protection" in 1984 or 1986, when the Commission determined

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2 See, e.g., Comments, filed May 12, 1978, Petition of Action for Children's Television; Comments, filed February 12, 1979, Second Notice of Inquiry; Comments, filed June 16, 1980, Children's Television Programming and Advertising Practices, Docket No. 19142; Comments, filed April 28, 1983, Children's Television and Advertising Practices, Docket No. 19142; Comments, filed November 2, 1983, Revision of Programming and Commercialization Policies, MM Docket No. 83-670; Comments filed February 19, 1988, MM Docket NO. 83-670; Comments filed May 1, 1989 before the House Telecommunications and Finance Subcommittee.

that there was no need for such guidelines in children's television.[3] Further, we are aware of no new evidence that suggests they need such "protection" now.

Children's advertising does not harm children. Commercials for products that are aired during children's programming are designed to show the product's features and explain its benefits in terms that are understandable to children and yet sensitive to their special attitudes and perceptions. These commercials are carefully reviewed by the advertiser, its advertising agency, and the station or network that will air the advertising. In addition, the advertising industry's own self-regulatory mechanism, the National Advertising Division (NAD) of the Council of Better Business Bureaus, continues it initiatives.[4]

With respect to a study provided by Action for Children's Television, "Commercial Time In Children's Television Programming", during the April 6th hearing in the House Telecommunications and Finance Subcommittee, critics of children's advertising used

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3 See Report and Order, MM Docket No. 83-670, 98 FCC 2d 1076 (1984); Memorandum Opinion and Order, MM Docket No. 83-670, 104 FCC 2d 358 (1986).

4 NAD's special unit for children's advertising, the Children's Advertising Review Unit (CARU), continues to review advertisements challenged by consumers, competitors or public interest organizations. If an advertisement is found not to satisfy the requirements of the CARU code, modifications or withdrawal are the predominant remedy.

this limited study to show that commercial time has grown to as much as fourteen minutes per hour of children's television. The study was positioned to the Subcommittee as conclusive evidence that the rate of increase of commercial time during children's programming was alarming and uncontrolled, misleading Chairman Edward Markey (D-MA) to believe there was nothing to counteract this perceived trend. However, close inspection of the data in the study discounts its findings. Only the independent stations studied show any measurable breach of a twelve minute standard. The most insinuating findings are placed at the beginning of the study to make the first impression. We feel the findings of this study have been seriously misrepresented by its proponents, and are far too limited and distorted to serve as an accurate national yardstick of the current commercialization of children's programming.

We also feel that advertisers, for perfectly valid economic reasons, place a "natural cap" on the amount of commercial time within an hour of children's programming. When too many commercials are running in any given time frame, they lose their impact and advertisers begin to shy away from the cluttered airwaves. It is simply not very smart to attempt to break through the clutter. In fact, children's advertising is basically like all other advertising. Advertisers, motivated by their hope for sales, and operating within standards and guidelines imposed by the private sector, seek advertising

particularly suited to the capabilities of the intended audience.

Even more restrictive than the measures proposed by S.707, the legislation introduced by Senator Wirth (D-CO) on June 21, 1989, contains added features which are particularly detrimental to all participants in the advertising process: advertisers, their advertising agencies, broadcasters, and consumers. Commercial minutes permitted during weekend hours of children's viewership have been squeezed even further to 9.5 minutes from the 10.5 minutes proposed in the initial legislation. By this seemingly slight reduction in allowable advertising time, broadcasters will be denied significant revenue that helps make possible positive programming for children. As we have pointed out in these comments, an unnatural cap on commercial time, whether it be 9.5 minutes or 10.5 minutes, chisels at the foundation upon which free, over-the-air television is based.

The most serious aspect of S.1215, however, rests in the bill's attempt to identify "commercial matter". This effort fails to define the term in a meaningful, sensible way. In truth, the statement "all matter broadcast by a broadcast television licensee for which any money, service, or other valuable consideration..." is so overly broad as to effectively encompass not only the traditional advertising message, but also a public service announcement, a station identification, and "stay-tuned" announcements. Indeed, even a wonderfully educational

children's program such as Sesame Street, if shown on broadcast television, would arguably be precluded by the all-encompassing provision set forth in S.1215. This indescriminate provision includes all character toys which are commercially available, and therefore would categorize Sesame Street (and other highly-acclaimed educational programs) as a plot to sell toys.

In short, while the A.A.A.A. views the restrictive measures in S.707 as unnecessary and burdensome, the enhanced regulations proposed by S.1215 are even more detrimental because of their overbreadth and ambiguity. As the bill would, in practice, prohibit children's programming based on a commercial product, American society would witness the loss of countless shows. Walk into any toystore and find a Bugs Bunny stuffed animal, a Big Bird talking doll, Smurf miniatures, and countless Disney/Mickey Mouse products. It is a reality in our competitive economy that programming, and the ability to create programming, is linked inextricably to the marketability of the programming. This marketability necessarily includes products based on shows and cartoons.

Contrary to the assertions of critics of children's advertising, children are not putty in the hands of advertisers. As it has been explained by one authoritative veteran of years working to create advertising attractive to children:

> We must stop treating children as helpless, gullible sheep who need to be carefully watched and protected. There is no evidence that television is the wolf in sheep's clothing that is slowly devouring our children,

> though many critics would have you believe that. Children are not that easy to entertain or persuade; they will not watch (everything) put in front of them on television, and will not buy (or ask to buy) everything that is cleverly advertised to them. In reality, children are intelligent, discriminating, and skeptical. Despite their lack of experience, they are not that easily fooled[5].

Without doubt, advertisers seek to inform and to influence the preferences of children by means of advertisements intended to stimulate their interest. Nonetheless, the continuing procession of products which have failed in the marketplace despite heavy investment in advertising during children's programming demonstrates most vividly that children are both sophisticated and discerning even when very young.

Advertising also is accused of persuading children to force their hapless parents into unwarranted purchasing decisions. In fact, however, the decision-making process surrounding the purchase of a "children's" product is not unlike the adult-child dialogue and interaction that occurs in many regular activities. Children lobby their parents for a later bedtime with the same vigor used in urging a particular purchase decision. Advertising provides children with a source of information about aspects of our society, and, by introducing children to basic concepts underlying our free market economy, helps to prepare them for adult American life.

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5 Cy Schneider, Children's Television: The ART, The Business, and How it Works (Chicago: NTC Business Books, 1987), at 2.

Critics of children's programming and the advertising which supports it also claim that broadcast television uses scarce airwaves and that children have no media alternatives.

This is especially untrue today in light of the proliferation of choices offered by cable television. According to TV Dimensions '88[6], the latest A.C. Neilsen count shows 90.4 million American homes have television sets. Fifty-three percent of these homes have cable television, and that is expected to reach 60% by 1990. Most cable systems offer several channels which concentrate on children's programming, giving many children access to a continuing variety of children's programs. If, for any reason, children are dissatisfied with the offerings of network broadcasters, they will switch to cable programming and force broadcasters to make programming changes.

Congress should be sensitive to the fact that reimposing commercialization guidelines will create an administrative burden for the FCC as well as administrative and cost burdens for broadcasters and advertisers. Of course, to the extent that quantitative limitations on commercials are imposed, there may be less available media time in children's programming. If so, the price of such media time could rise. Higher media costs could mean fewer advertisers, and, since advertising supports children's programming, fewer broadcast choices for children's programming. These negative aspects of reimposing the

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6 TV Dimensions '88 (New York: Media Dynamics, 1989), p. 11, 29.

commercialization guidelines must be weighed in considering the alleged--but unproven--benefits which critics of television advertising say will accrue from government intrusion.

The reasons advanced today by the A.A.A.A. against government intrusion into children's television are as compelling as they were several years ago when the Commission decided that quantitative commercialization standards were unnecessary. Again and again, the advertising community has heard the assertions of critics that commercial advertising must be limited by government fiat because it has harmful effects on children. Congress should not mandate through legislation what the Commission, in its expertise, already has rejected twice.

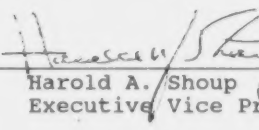
The alternative and preferred method to improving the quality of children's television programming already has been proposed in the House of Representatives in legislation introduced by Mr. Tauke (R-IA). Industry self-regulatory standards can be encouraged and facilitated by exempting broadcasters from the anti-trust barriers that prohibit intra-industry communication. Just as CARU is operating effectively to ensure appropriate and comprehensible commercials for young viewers, self-implemented industry guidelines also can allow broadcasters the opportunity to improve the quality of programming. This approach circumvents the regulatory burden that the government and the FCC necessarily undertake when imposing lawful regulation like the Children's Television Act. Furthermore, the message to all

broadcasters may be much stronger and more meaningful if it comes from within the industry.

Advertising self-regulation, operating in a free market, is working to provide an effective guarantee of quality children's advertising. Market forces, acting without government interference, will best serve the interest of children by naturally regulating what is broadcast to them, without the need for intrusive and costly government regulation. The A.A.A.A. joins with all others who have submitted comments in opposition to the reimposition of quantitative commercialization requirements.

Respectfully submitted,

AMERICAN ASSOCIATION OF
ADVERTISING AGENCIES, INC.

By 
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July 20, 1989
A.N.A.'80th Year

Honorable Daniel K. Inouye
Chairman
Subcommittee on Communications
227 Hart Senate Office Building
Washington, D. C. 20510-6130

Dear Mr. Chairman:

The Association of National Advertisers, Inc. (A.N.A.) appreciates greatly the opportunity you afforded us to testify before the Subcommittee on Communications on July 12, 1989 regarding television advertising to children.

As you know, S. 1215, the "Children's Television Education Act of 1989," introduced by Senator Wirth, would limit the amount of "commercial matter" that could be aired during children's programming. This proposal goes far beyond attempting to set time limits for programming directed to children. Taken to its logical conclusion, S. 1215 could severely impact the programs you wish to produce under S. 797, the "National Endowment for Children's Education Television Act of 1989." Because this issue significantly relates to the July 12, 1989 children's advertising hearings, A.N.A. respectfully requests that this letter be appended to our testimony and be made part of the hearing record.

Under Senator Wirth's proposal, "commercial matter" is defined as all matter, "for which any money, service or other valuable consideration is directly or indirectly paid to or promised to . . . the station so broadcasting, from any person, regardless of whether such matter is entirely commercial in content." (emphasis added). Given the broad sweep and open-ended nature of this definition, A.N.A. believes that S. 1215 could nullify or seriously curtail the effectiveness of S. 797.

Under your bill, the Secretary of Education is required by Congress to provide that the children's programs funded under S. 797 will be provided "at a charge" that "will assure maximum practicable distribution." The Secretary to assure "maximum practicable distribution" may very well have to sell these federally funded programs

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at discounted rates below the levels that otherwise might obtain in the marketplace. Providing these programs at discounted rates would, in our view, trigger the provisions of S. 1215 as the Secretary would be providing these children's programs "directly or indirectly for . . . other valuable consideration."

Thus, the Secretary's actions will automatically and involuntarily transform these children's programs developed under S. 797 into "commercial matter" subject to the 9.5 and 12 minute "commercial matter" limits of S. 1215. In this circumstance private broadcast licensees, which air the lion's share of television programming, will have to decline offers by the Secretary of Education to carry the programs you want produced or be in violation of these time limit provisions. We are certain this is not the result you desire. This is just one example of the totally overbroad impact of Senator Wirth's legislation and provides reason enough for the Senate Commerce Committee to reject it.

I would be happy to discuss this issue with you or your staff and look forward to working with you on the many issues of mutual interest the Communications Subcommittee will be considering in the coming months.

With best wishes,

Sincerely,

Daniel L. Jaffe

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

1989 AUG 16

Helen Boehm, Ed.D
Vice President
Children's Advertising Review Unit

August 7, 1989

The Honorable Daniel K. Inouye
Subcommittee on Communications
227 Hart Senate Office Building
Washington, DC 20510-6130

Dear Mr. Chairman:

I am writing to you in response to testimony presented during the Senate Communications Subcommittee hearing concerning the proposed regulation of children's television and discussion generated by the introduction of S. 707 and S. 1215. I would like to preface my comments by saying that The Children's Advertising Review Unit (CARU) applauds the interest of the Committee in addressing an issue of crucial importance to all American families as well as to the very fabric - and future - of our country.

The Children's Advertising Review Unit of the Council of Better Business Bureaus is the self-regulatory mechanism for the children's advertising industry. Although it is not usually the policy of the Council to either support or oppose pending legislation, I would appreciate the opportunity to inform you and your Committee about the role of industry voluntary self-regulation, as I did the House Subcommittee on Telecommunications and Finance. Additionally, I would be grateful for the opportunity to enter into the record of this hearing, a reaction to several statements made during testimony given before your Committee which may have provided members with inadequate information upon which decisions concerning national regulatory policy will be based.

As you know, children are still in the process of developing skills with which they can fully understand or evaluate some forms of advertising communications. For youngsters, the abilities necessary to make wise purchase decisions and become responsible consumers are still in the formative stage. At CARU we feel that certain advertising techniques and strategies, which are appropriate for adults, may be confusing or misleading to children. Therefore, we review and evaluate national advertising directed toward children under the age of twelve and, when an advertisement is found to be misleading, inaccurate or inconsistent with our self-regulatory guidelines, we seek change through the voluntary cooperation of advertisers. Our decisions are reported in the NAD Case Report, which is published monthly and distributed nationally.

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CARU does not address the quantity of commercial time directed toward youngsters, but, rather the quality and clarity of the specific advertising messages. Our guidelines are subscribed to by the major marketers of children's products and endorsed by broadcasters and trade associations. Periodically, our guidelines are revised to reflect new insights gained from experience and research relating to children. CARU advocates, as does the Council of Better Business Bureaus, the strengthening of self-regulation whenever possible and wherever feasible because we have found that dedicated industry self-regulation is both effective and long lasting.

Mr. Chairman, during the Committee hearings, I was particularly concerned by comments I heard such as,

...Children's interests have been consistently overlooked by the broadcast industry as well as public policy-makers...

...If the regulators won't act to improve children's television, and the broadcasters won't do it themselves, then we in congress have to make it happen...

...Broadcasters should not be allowed to take advantage of our children through commercial efforts...

voiced by Dr. Dale L. Kunkel, Senator Howard M. Metzenbaum and Dr. Francis M. Palumbo, respectively, and echoed by other witnesses. Sir, I sincerely believe that the industry has demonstrated a concern for children through support of CARU and commitment to advertising self-regulation. As a psychologist and the parent of two children myself, I am proud to report that since our Unit was founded by the advertising industry in 1974, children's advertisers have voluntarily modified or discontinued 269 commercials which did not comply with our standards. These actions did not occur as a result of government regulation, but developed out of a sense of care and responsibility for children as well as good business practices by advertisers.

Children's television is still far from reaching its ultimate powerful and positive potential. Similarly, advertising to children continues to demand increased attention, sensitivity and inspection. Much work is needed before commercials reach the level of educational promise which they will someday hold. But, to "throw out the baby with the bath water," especially in light of ongoing and effective industry self-regulatory efforts, seems counterproductive and unwise. Mr. Chairman, we can not blanketly condemn all advertisers and broadcasters for the mediocrity of some programs and advertisements currently aimed at youngsters. Rather, consumers and government should enlist the support and reinforce the commitment of these enterprises on behalf of children and their families.

Thank you for your attention and interest.

Sincerely,

Helen Boehm

HB:COW

cc: Senator Ernest F. Hollings✓
Senator Wendell H. Ford
Senator Albert Gore, Jr.
Senator J. James Exon
Senator John F. Kerry
Senator Lloyd Bentsen
Senator John B. Breaux
Senator Bob Packwood
Senator Larry Pressler
Senator Ted Stevens
Senator John McCain
Senator Conrad Burns
Senator Slade Gorton

James McIlhenny, President, CBBB
Mary-Jane Raphael, Senior Vice President, NAD

American Psychological Association

Advancing psychology as a science, a profession, and as a means of promoting human welfare

August 7, 1989

Senator Daniel K. Inouye
722 Hart Senate Office Building
Washington, DC 20510-1102

Dear Senator Inouye:

On behalf of the coalition of undersigned professional and public interest organizations, we would like to thank you for conducting the Senate Subcommittee's recent hearing on S. 1215, "The Children's Television Education Act of 1989", and S. 707, "The Children's Television Act of 1989." We would also like to take this opportunity to underscore a number of important issues that we believe offer a very strong rationale for enacting S. 1215.

At the Subcommittee hearing, and at other hearings in the past, a substantial amount of evidence was presented documenting broadcasters' consistent failure to adequately serve the educational and informational needs of children. The most egregious example of this failure is the virtual absence of educational children's programming on the commercial broadcast airwaves. Further, it is clear from the National Association of Broadcasters' recent testimony that the industry continues to believe that its service to children is adequate.

We find this attitude, as well as the current state of children's television, extremely troubling. It is directly challenged by several scientific reports that have carefully evaluated the programming broadcasters provide for children and found that programming severely lacking. It is contradicted by studies conducted by the FCC and other governmental agencies. But more importantly, we are concerned, now more than ever, that the broadcast industry's continued intransigence strongly suggests that a weak programming requirement would not produce any improvements in children's television.

A programming obligation which would allow stations to meet the needs of children through their "overall programming" efforts may be unnecessarily vague. If broadcasters choose to comply with the letter, rather than the spirit of the law, there is little doubt this requirement could be satisfied without providing what we currently lack and need to promote -- educational programs specifically tailored for children.

The fundamental public policy goal in this area must be to increase the amount of programming that will hold educational value for children. Because of children's limited level of cognitive development, that goal can

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be met effectively only through the provision of content specifically designed to take children's special needs and limited information-processing capabilities into account. That is what the public interest requires and what is mandated in S. 1215.

Based on both the industry's past programming performance and the NAB's recent testimony, we are extremely concerned that a vague programming obligation is unlikely to generate meaningful improvements in children's television. S. 1215 offers a much more effective alternative for improving children's programming.

Finally, S. 1215 contains two other important provisions that will work to improve the state of children's television. The legislation would classify program-length commercials as advertising -- which indeed they are -- and then subject them to the relevant limits for children's programs. In addition, S. 1215 would require broadcasters to provide advance public notice of programs designed to comply with the programming requirement.

We were very pleased to learn at the hearing of your intention to mark-up children's television legislation in the near future. As the Committee considers this important issue, we strongly urge you and your colleagues to adopt S. 1215.

Sincerely,

American Academy of Child and Adolescent Psychiatry
American Academy of Pediatrics
American Psychological Association
Consumer Federation of America
National Association for Better Broadcasting
National Education Association
National PTA

cc: Senate Committee on Commerce, Science, and Transportation
Senator Timothy Wirth